

The Solicitors' Journal

VOL. 90

Saturday, December 28, 1946

No. 52

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CURRENT TOPICS

Retrospect

THE end of the first complete year since the fighting ended gives us an opportunity of reviewing what has been done towards picking up the broken threads and recommencing peaceful avocations. The wearing out of capital equipment during the war and the difficulty of present replacement may slow down recovery of industry, but the lawyer's capital equipment is his brains and experience. The former have not become worn out among war's excursions: on the contrary the return of so many of our younger lawyers has been like a fresh breeze clearing away mists and cobwebs from courts and offices. If their experience is rusty after a six years' absence a refresher course provided by the untiring forethought and energy of The Law Society, and a few months' work in the office, have soon provided the necessary polish. Meanwhile, new legislation continues to pour forth from Westminster, some of it of a political and industrial pattern and a smaller part of it of direct interest to lawyers. The Coal Industry Nationalisation Act, the Trade Disputes and Trade Unions Act, the Bank of England Act, Cable and Wireless Act, the Atomic Energy Act, the Borrowing (Control and Guarantees) Act are only a few of the legislative Acts reflecting economic changes. Of more immediate interest to lawyers are the Furnished Houses (Rent Control) Act, the National Insurance Act, the Patents and Designs Act and the Judicature (Circuit Officers) Act, and finally the new Companies Bill. The year also brought forth a bulky instalment of the findings of the Commission on Equal Pay and the Curtis Report. Among those whose deaths we mourn are Lord Justice MacKinnon, Sir George Rankin, Sir Gervais Rentoul, Judge Crawford, Lord Cautley, K.C., Mr. C. E. E. Jenkins, K.C., and Mr. W. T. Cresswell, K.C.

Legal Decisions of the Year

At the head of all legal decisions for years to come will remain the Nuremberg decisions, by which the judges of the nations vindicated the rights of man to dwell free from the ogreish tyrannies which have lately masqueraded under the guise of state authority. After such a weighty and historic case, citations of decisions under our local common law and statutes may seem like an anti-climax. The Nuremberg trial, however, drew so much into its procedure and rules of evidence from our common law that we may feel legitimate pride in our free constitutions and legal system. We select for special mention *Deyong v. Shenburn* (ante, p. 139)—no implied term in a contract of service that the master will take steps to ensure the safety of his servant's property; *Joyce v. Director of Public Prosecutions* (ante, p. 60)—an alien who holds a British passport may be guilty of high

treason; *Adams v. Naylor* (ante, p. 527)—injury to children owing to concealed mine on seashore held a war injury; *Weatherley v. Weatherley* (ante, p. 296) and *Scotcher v. Scotcher* (ante, p. 490)—refusal of sexual intercourse is not in itself desertion but may be if combined with other circumstances; *Holmes v. Director of Public Prosecutions* (ante, pp. 371, 441)—a confession of adultery by a wife is not sufficient provocation to reduce what would otherwise be a verdict of murder to one of manslaughter; *Palser v. Grinling and Property Holding Co., Ltd. v. Mischeff* (ante, pp. 453, 454) on what constitutes a substantial quantity of furniture or service to take dwelling-houses out of the Rent Acts; *Read v. Lyons* (ante, p. 508)—explosion in a shell filling factory causing injury does not result in absolute liability of occupier for introducing dangerous things on to his land.

Remuneration of Probation Officers

It will be recalled that among the immediate reforms recently promised in the House of Lords debate on the proposed Criminal Justice Bill was the scaling up of the salaries of probation officers. This has now been done by means of new rules made under the Probation of Offenders Act, 1907, and Pt. I of the Criminal Justice Act, 1925. (The Probation Rules, 1946, No. 1967/L24.) As from 1st December, 1946, full-time probation officers of twenty-three years and under thirty years of age are to receive salaries of from £305 a year in the case of men and £290 a year in the case of women, rising by two annual increments of £10 a year and four annual increments of £15 to £385 for men and £370 for women under thirty years of age. Older officers are to receive £400 a year in the case of men and £385 a year in the case of women, rising by annual increments of £15 until £460 a year is reached and further rising by annual increments of £20 in the case of men until a maximum of £570 is reached. There is a very slight adjustment of the scale where a probation officer attained the age of thirty on or before 1st December, 1946. Officers permanently allocated wholly or mainly to courts in the Metropolitan Police District or the City of London will have an additional allowance of £30 a year. A principal probation officer may be given a special scale, and a senior probation officer may be given an extra annual allowance. Weekly salaries for substitute or temporary probation officers may not exceed £6 10s., or in London £7. Some may possibly deplore that the rule of unequal pay for men and women is still followed, but the increased scales from the previous 1944 scale should create conditions under which officers will be able to give an even better service than hitherto, and they should attract the best types of social worker.

Exchange Control Bill

ONE of the points made in the Memorandum on the Exchange Control Bill (Cmd. 6954) is that in practice the foreigner is not normally asked to surrender currency of his own country and, if he settles here, he can enjoy the ordinary facilities of a British resident. When he returns to his own country he can draw his income from here on the same terms as though he had remained at home throughout. There is no discrimination against foreigners as such, but they must conform to our rules while they are here, just as they are expected to observe our rules of the road. The memorandum also contains a useful outline of the contents of the Bill. It states that Part I restricts dealing in gold and foreign currency except with authorised dealers (principally banks), and requires gold and most foreign currencies to be sold to them. The authorised dealers in turn are obliged to sell to and buy from the Exchange Equalisation Account. By this means Official exchange rates are maintained and the central supply of exchange is fed. Part II prevents payments to persons outside the sterling area, except with Treasury permission. Part III maintains the existing control over the issue and transfer of securities where non-residents are concerned, and introduces a new control over foreign and bearer securities. Part IV continues present controls over import and export of currency notes, securities, etc., and provides the necessary powers to ensure that exports are properly paid for. Part V contains miscellaneous provisions concerning the prompt collection of debts, control of foreign subsidiaries, and ancillary matters. Part VI contains, in addition to definitions and other formal provisions, the important power to make exceptions by Treasury Order, and new powers (cl. 40) over emigrants which post-war conditions require. The Schedules are supplementary to the clauses which refer to them and introduce no important changes.

Exchange Control : Settlements

AN informative debate on the proposed prohibition of the making of certain deeds of trust and settlement took place on the Committee stage of the Exchange Control Bill in the Commons on 9th December. Clause 29, according to Sir HUGH LUCAS-TOOTH, who opened the debate, forbids the making of any deed of settlement or trust so as to confer any benefit on persons residing outside the scheduled territories. Secondly, it forbids the exercise by deed, but not by will, of any power of appointment in favour of any person resident outside the scheduled territories. The clause, according to Sir Hugh, would have the effect in a marriage settlement of preventing the wife from appointing a share of the funds, even by will, in the exercise of her power of appointment to any person who happened to be outside the scheduled territories at the date of the settlement. If, in default of appointment, the trust funds were to go to the children of the settlor and one of them happened to be living outside the scheduled territories at the date of the making of the settlement, nothing thereafter could give that child any benefit in the trust fund. The Solicitor-General agreed that the definition of the word "settlement" in the clause was wide. He further said that he was not prepared to say that if they viewed every possible settlement they might not find anomalous results. It was unavoidable, but there was the saving provision that the Treasury could give permission to create a particular settlement. A settlement would not be invalidated but only *quoad* a particular person outside the scheduled territories getting an interest. In cases where there was difficulty, a dispensation would be made. Settlements by will were permitted by the clause. When Mr. LESLIE HALE pointed out that a simple amendment would deal with the question of the exercise of powers given by will, the Solicitor-General promised to look at the definition again and see whether it could be improved to deal with the points made.

Court of Appeal Precedents

THE October issue of the *Law Quarterly Review* is as rich as ever in material for both the theoretical and the practical lawyer. We select from its notes an interesting topic on the

binding character of precedents in the Court of Appeal, with special reference to *Fitzsimons v. Ford Motor Co., Ltd.* [1946] 1 All E.R. 429, in which the Court of Appeal refused to follow three of its own previous decisions. The cases were *Steel v. Cammell Laird & Co., Ltd.* [1905] 2 K.B. 232; *Williams v. Guest, Keen & Nettlefolds* [1926] 1 K.B. 497, and *Cole v. London & N.E. Railway Co.* (1928), 21 B.W.C.C. 87. In the last case ATKIN, L.J., had stated that the court was bound by authority, but in the present case SCOTT, L.J., had held that this was a mistake, as the *Steel* case was not consistent with the House of Lords decision in *Burrell & Sons, Ltd. v. Selvaig* (1921), 14 B.W.C.C. 158. The essential point to note was, the writer stated, that both the *Williams* case and the *Cole* case were decided by the Court of Appeal after the House of Lords had affirmed the decision of the Court of Appeal in *Burrell's* case, and in neither of them was the view expressed that there was any inconsistency with the *Burrell* case. The importance of the new case, the writer stated, was that in *Young v. Bristol Aeroplane Co.* [1944] K.B. 718, it was held that the Court of Appeal was absolutely bound by its earlier decisions unless, *inter alia*, they were inconsistent with general principles laid down by the House of Lords. The Court of Appeal has now held that the exception is applicable even when the decision of the House of Lords precedes two out of the three Court of Appeal decisions which are being overruled. The writer finds the case to be an illustration of how unsatisfactory is the rule in *Young v. Bristol Aeroplane Co.*, *supra*, because it fails to achieve any reasonable amount of certainty.

Gilt-Edged Securities and Trusts

WITH the pros and cons of the nationalisation of transport we have nothing to do, but as lawyers we may well be concerned with a probable result of the proposed scheme. It was raised in a letter to the *Daily Telegraph* of 5th December, 1946, from Mr. CHARLES KINROSS, who asked, if and when the proposed nationalisation of transport became law, how were trustees to explain to their wards that their income from trustee securities had diminished *pro rata* to capital investments in railway debentures, etc. The education of young people hardly seemed likely to benefit by the change. A practical example of what the result will be was given in *The Times* of 7th December, 1946, by "A spinster of 62" who wrote that she was tenant for life of a small trust estate inherited in 1905. After the various amalgamations of railways some years ago the trust emerged with, and still had, about £11,500 of English railways 4½ per cent. "gilt-edged" stock. The remainder of the trust stock was of a nominal value of £7,600. Of this, £4,600 was in war loan and loss of income was felt badly enough when interest on this was reduced from 5 to 3½ per cent. The present proposals with regard to railway stock, she wrote, appeared to involve a reduction in income of over £200 a year, and yet the trustees were not permitted to go outside trust securities in the search for a better yield. There is the hardship, and how typical it is, solicitors in charge of trust estates know only too well. There may be a great deal in the recent Government statement that shareholders are to get a really gilt-edged security in place of one which would otherwise have eventually fallen to a level which was more representative of the depreciated assets of the railway companies. The rights and wrongs of the matter must, however, be thrashed out in Parliament, and if, in the interests of higher issues, the hardship must be borne, it will be borne all the more willingly through understanding what are the higher issues for which the sacrifice must be made.

The Death Penalty

COMMANDER STEPHEN KING-HALL has rendered great service in the collection and dissemination of accurate news. One of his ventures has been the issue from time to time of National News Letter Reports, in which topics of the day are examined and statistical information given. The latest of these is Report No. 8, entitled "Capital Punishment: Society takes Revenge: An Examination of the Necessity for Capital Punishment in Britain To-day," by THEODORA

CALVERT, J.P. (Barrister-at-Law), with an introduction by MARGERY FRY, J.P. The author, Mrs. Calvert, has carried on the work of her husband, the late ROY CALVERT, for the National Council for the Abolition of the Death Penalty, and as Vice-Chairman of the Howard League for Penal Reform. An interesting table gives statistics of the motives or causes of the murders committed in England and Wales during the twenty years ending 1905. The greatest number consist of murders arising out of causes which could not be ascertained, but after those, revenge, robbery, quarrels or violent rage and drink were predominant. Far more crimes, probably, had a sex basis than is known, it is stated, and in the great majority of cases murder means murder by men, and in a very large proportion of cases it is wife murder. The great majority of murders are committed by persons of from twenty-one to forty years of age. From the official report of Sir JOHN MACDONELL, accompanying this survey, the author quotes: "I am inclined to think that this crime is not generally the crime of the so-called criminal classes, but is in most cases rather an incident in miserable lives in which disputes, quarrels, angry words and blows are common." Capital punishment as a deterrent and the experience of other countries are discussed in this excellent pamphlet, and the social effects of capital punishment and its alternative are ably received. It is published at an appropriate time, for there is good reason to believe that the question will soon be debated in Parliament.

Rent Control in the U.S.A.

SOLICITORS who are a little weary of the procession of homelessness in the county courts, reflected in streams of possession cases, may find some comfort in an article by JULIUS HENRY COHEN on Rent Control after World War I, in the "New York University Law Quarterly Review,"

for April, 1946. To show that the problem is not a new one, he quoted the rent riots, bloodshed and hardship of Irish tenants described in Morley's "Life of Gladstone." By comparison, our "squatting episode," culminating in the triumph, however sad, of law and order, assumes a certain dignity. In Ireland, Captain Boycott's exactions resulted in the moral sanction of the "boycott," but whether that would be a good substitute to-day for the Rent Acts may be open to question. Even in those days legal steps had to be taken to protect tenants, by means of the tenant's equity of renewal. The writer referred to the analogous Jewish *jus casaca* which mitigated rising rents due to overcrowding in the medieval Jewish ghettos. In New York, after World War I, legislation following the report of an investigating committee authorised the courts to establish fair and reasonable rentals, and to give reasonable protection against eviction. By 1944, this principle of law had gone much farther—ceiling prices, priorities and all the other controls. He noted that "the Emergency Rent Laws provoked outcries from real estate owners and especially from mortgagors—just as such protests came in England a century or so before when the equity of redemption came in." He admitted that these laws did result in hardship for widows dependent upon fixed income from rentals. The great majority of lawyers, too, thought these laws "unconstitutional," but the greatest lawyers apparently thought otherwise. Mr. Justice HOLMES was impressed with the development in English law, and said: "The preference given to the tenant in possession is an almost necessary incident of the policy and is traditional in English law." If that is so, it would seem that the Rent Acts in this country do not represent anything like so novel an invasion of property rights as some lawyers would have us believe.

THE NECESSITY OF WRITTEN ASSENTS

(CONTRIBUTED)

THE object of executing an assent to the vesting of land is to pass the legal estate to the assentee. It must be in writing and be signed by the personal representative and must name the assentee, and then it operates to vest the legal estate in the assentee. The penalty of the assent not being in writing or not in favour of a named person is that it is not "effectual to pass a legal estate" (Administration of Estates Act, 1925, s. 36). If a person has already the legal estate vested in him, it would appear useless or at any rate unnecessary to purport to vest it in him again. But there are people who think that a written assent should be executed when the person in whom the legal estate is vested changes the character in which he holds it.

The true position is well laid down in the "Encyclopædia of Forms and Precedents," 3rd ed., vol. 6, p. 557: "When, as is usual, a will contains a trust for sale and conversion, the executors are almost always appointed trustees for sale, the question then arises whether upon the estate being 'cleared' by the completion of their duties as executors so that they become trustees, they should execute an express assent in their own favour. An assent is not required in order to pass the legal estate, for this is already in them as personal representatives and remains in them when they become trustees, so that an assent may be implied as under the former law when they have cleared the estate; and this is sufficient to enable a new trustee to be appointed. But it is convenient to mark the date when the change of character from personal representative to trustee takes place."

There is authority for these propositions in the case of *In re Hodge, Hodge v. Griffiths* [1940] Ch. 260, where a testatrix devised the property to her husband absolutely and appointed him her executor. The husband did not execute a written assent in his own favour, but Farwell, J.,

held that the property had vested in him. The learned judge added these words: "No doubt, under the Act, if a vendor is selling as beneficial owner taking under a will, the purchaser is entitled to require a written assent in order that he may be satisfied as to the title, and the Act gives him the right to demand it, but in a case of this sort the question is not the same. The legal estate or the property is vested in the plaintiff as legal personal representative and there is therefore no difficulty with regard to that." The reference to selling as beneficial owner is somewhat puzzling. Perhaps his lordship was merely referring to the case of a devisee selling when he was not also the personal representative. At any rate the reference is not to an executor trustee. In *Harris v. Harris* (noted in 92 L.J. News. 284), Hildesley, J., pointed out that a written assent was only necessary to pass a legal estate and not to confirm the passing. In *In re Pitt* (1926), 44 T.L.R. 371, an administratrix with the will annexed appointed two new trustees in her place without executing an assent in writing, and Clauson, J. (as he then was) held that they had been properly appointed trustees.

Thus, from the words of the Act and the decisions which we have cited, it seems clear that the executor-trustee can sell without a written assent; but as the words of an assent are very simple and there is no stamp required if the assent is under hand only (Administration of Estates Act, 1925, s. 36 (11)) it is prudent to execute a written assent when the change of character from executor to trustee takes effect, and so save questions in the future.

It may not always be remembered that any instruments sealed by the Public Trustee shall not, by reason of his using a seal, be rendered liable to a higher stamp duty than if he were an individual (Public Trustee Act, 1906, s. 1 (2)).

Mr. E. Harris, solicitor, of Swansea, left £55,124, with net personality £29,979.

Mr. W. Pullan, solicitor, of Bardsey, left £27,080, with net personality £24,591.

CRIMINAL LAW AND PRACTICE

CLOSING SPEECH FOR DEFENCE IN MAGISTRATES' COURTS

I HAVE received a number of letters dealing with the question of the defendant's advocate's right to address the bench in summary prosecutions, which I raised in my previous article. Most of them refer me to "Stone's Justices' Manual," 78th ed., p. 192, where it is stated that s. 14 of the Summary Jurisdiction Act, 1848, regulates procedure before the justices in summary cases, but it continues: "... If on the other hand the defendant does not plead guilty, the prosecutor's representative will open the case and call his witnesses in support, who will be cross-examined by the defendant's representative. At the close of the case for the prosecution the defendant's representative will either submit there is no case to answer in law (to which submission, as a point of law, the prosecutor's representative may reply), or will open his client's case and call his witnesses, who will be cross-examined on behalf of the prosecutor. The prosecution may then call rebutting evidence, but there is no right of reply, save on a point of law, either by the prosecutor or defendant. By leave of the court the defendant's representative is sometimes permitted to postpone his address until after his witnesses have been called, and it should be noted that where the only witness to the facts of the case called by the defence is the person charged, he must (pursuant to s. 2 of the Criminal Evidence Act, 1898, and, after 31st May, 1926, s. 12 (5) of C.J. Act, 1925) be called as a witness immediately after the close of the case for the prosecution, and consequently before his representative addresses the court."

One of my correspondents comments on this passage: "It seems clear that when a person is charged before examining justices with an indictable offence the defendant's solicitor or counsel must address the court before calling his evidence (Criminal Justice Act, 1925, s. 12 (5)) . . . It would appear that the learned editor of 'Stone' has applied the procedure applicable to the examination of indictable offences to matters dealt with summarily and has done so contrary to s. 14 of the Summary Jurisdiction Act, 1848. It is reasonable to suppose that the average clerk would prefer to rely on 'Stone' rather than on his own interpretation of s. 14."

A country correspondent has written that after some twenty years' experience as a police court advocate he has found it the invariable practice of the courts in which he has appeared for the defendant's advocate to address the bench before calling his witnesses where witnesses in addition to the defendant are called, and this practice would seem to have the support of "Stone" and of "Douglas on Summary Jurisdiction," p. 46 of the 10th ed., where it is stated: "The defendant then commenting if he thinks fit upon the evidence of the prosecutor's witnesses, and then calling his own . . ."

I am greatly obliged to all these correspondents, and agree that the point raised is of interest and importance, because the practice of disallowing speeches after the defendant's evidence is almost universal in country courts, although apparently not general before metropolitan police magistrates. On the question whether the universality or generality of a

practice legalises it, one recalls the argument in *Russell v. Russell* [1924] A.C. 687, that the practice in the Divorce Court for fifty years previously had been to admit evidence of non-access given by a spouse. Viscount Finlay's answer, which seemed apt and to the point, was that the practice was based on a certain construction of an Act, and if it appeared that the Act did not bear that construction the foundation for the practice was gone and the whole superstructure collapsed. "The fact that such a view is favoured by the practice of the Divorce Court cannot affect the meaning of the statute." *Mutatis mutandis*, the same rule should apply here, on the practice arising out of the construction of s. 12 (5) of the Criminal Justice Act, 1925.

It is obvious from the fact that s. 12 (5) comes within Pt. II of the Act under the heading "Indictable offences generally," as well as from the fact that the section begins "Where any person is charged before examining justices with an indictable offence . . ." that the subsection deals only with indictable offences. Does it cover indictable offences tried summarily under s. 24? That section is under another sub-heading, "Summary Jurisdiction." It will be observed that s. 12 applies "where a person is charged before examining justices with an indictable offence." The accused is charged first, and while he is charged the justices are examining justices. After the charge he may be asked to consent to summary trial. Section 24 (2) is not without interest, for it provides that during the hearing of a charge for an indictable offence a court may cause the charge to be reduced to writing and read to the accused and may then ask him whether he consents to be tried summarily. Can it be said that the justices are still examining justices after an accused has consented to be tried summarily? The definition section, 49, defines the expression "examining justices" as "the justices before whom a charge is made against any person for an indictable offence, and references to an examining justice include a reference to a single examining justice."

Although on the words of s. 12 (5) and s. 49 it would appear that justices are still examining justices and the kind of offence charged is still indictable after a defendant has consented to summary trial, it would appear contrary to common sense that the justices should continue to be described as "examining justices," especially as their duty under s. 24 is to proceed to summary trial of the offence charged. Moreover, the actual offence charged is no longer indictable, for the justices' duty is to proceed to summary trial. I conclude, therefore, that the procedure under s. 12 (5), which is obviously intended to apply exclusively to a case where examining justices take depositions for the purpose of committing an accused person for trial, does not apply to a case where an accused person has consented to summary trial. My view, therefore, is that it is not appropriate to a summary hearing, where the duty of the tribunal is to give a complete hearing to both sides, to apply the procedure laid down for preliminary investigations with a view to trial.

COMPANY LAW AND PRACTICE

COMPANIES BILL—II

I REFERRED to certain provisions in Pt. I of the Bill last week, and this week I propose to discuss cl. 11 to 17 in the same part, which deal with accounts and audits of companies.

Section 122 of the Companies Act requires every company to cause to be kept proper books of account with respect to all moneys received and expended, the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods by the company and the assets and liabilities of the company. This is a fairly concrete requirement, but the Cohen Committee thought that in certain circumstances a company might literally comply with the provisions of this section and still produce misleading information as to the true nature of its transactions. Clause 11,

no doubt to deal with this criticism, says that proper books of account shall not be deemed to be kept in respect of these matters "if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions."

This, it will be seen, is an extremely vague provision, and could hardly ever have any effect. Section 122 makes it a criminal offence not to keep proper books, and it seems unlikely that, if the books did in fact contain the matters required to be stated in that section, a conviction could be obtained on the ground that those books did not give a true and fair view of the state of the company's affairs.

The remaining part of cl. 11 is directed to seeing that where a company keeps its books of account outside England it shall make returns not less than every three months to the directors, containing all the information necessary for them to prepare the next profit and loss account and balance sheet.

The next clause deals with the yearly accounts and (in considerable detail) with the obligation that is proposed to be imposed of drawing up consolidated accounts in the case of holding companies. Clause 13, however, defining a subsidiary company, is almost equally long, and it will therefore be as well to consider that definition first.

Clause 13 lays down the test by which it is to be determined whether one company is the subsidiary of another, and the simplest way to consider the provisions is to consider with regard to two imaginary companies, called company A and company B, how you are to determine whether company B is a subsidiary of company A.

First of all B is to be deemed a subsidiary of A for the purposes of the Bill and of the Companies Act if A is a member of B and controls the composition of its board of directors, or if A holds more than half of B's "equity share capital." The phrase "equity share capital" has not, so far as I know, been used as a term of art hitherto, but by this clause it is defined as meaning the issued share capital excluding any part thereof which as respects both dividends and capital carries no right to participate beyond a specified amount in a distribution.

The clause further provides that B is also a subsidiary to A if B is a subsidiary to a third company, which is itself immediately the subsidiary of A under the first provision referred to, or it is itself the subsidiary of a fourth company, which fourth company is subsidiary to A, and so on.

There are various further rules laid down for determining this question. If A holds any shares in B in a fiduciary capacity those shares are not to count, and conversely if any shares in B are held by a third person as nominee for A, except where A's interest too is only fiduciary, those shares are to be counted as shares held by A in B, as also are shares in B which are held by a nominee for a subsidiary of A, unless, again, that subsidiary is only concerned in a fiduciary capacity. No doubt this provision is meant to provide that shares in B held by a nominee for a subsidiary of A who holds them on trust for A shall be counted as shares held by A, but it does not, so far as I can see, expressly so provide.

There is one further qualification of these rules, namely, that if A holds shares in B by virtue of any provisions in debentures or in a debenture trust deed, those shares are not to count.

There is another set of rules for the purpose of determining whether the composition of B's board of directors is deemed to be controlled by A; if the appointments of the majority of the board of B depend on A exercising in their favour or not exercising against them some power which is exercisable by A without any other person's consent or concurrence or can be made so to depend by a similar right or power of A, then A controls the composition of B's board. Similarly if the majority of B's directors automatically become directors of B on becoming directors of A, or if the majority of the directors of B are A and A's subsidiaries. There is a similar provision in this case saying that any power exercisable in a fiduciary capacity or by virtue of debentures or a debenture trust deed is not to count.

"Company," it should be noted, in this section means any body corporate, and if B is subsidiary to A then and only then A is called the holding company of B.

Having now, I hope, given some idea of what companies will turn out to be subsidiary to another company, we can turn to the earlier clause dealing with the annual accounts of companies.

These provisions are exceptionally elaborate, and cl. 12, which deals with the question, operates by reference to Sched. I to the Bill. The clause starts off simply enough by saying that every balance sheet and profit and loss account shall give a true and fair view of the affairs and profit or loss

of the company for the financial year. Then it goes on to provide that if the company is a holding company then with every balance sheet and profit and loss account laid before the company in general meeting there shall also be laid a consolidated balance sheet and a consolidated profit and loss account dealing with the affairs of the company and its subsidiaries at that time. This provision is, however, not to have effect if in the opinion of the directors this course in relation to any one subsidiary company would be impracticable or misleading.

The form of balance sheets and profit and loss accounts is to be in accordance with the provisions of Sched. I, which take up eight and a half printed pages, and it is therefore hardly possible to do more than indicate the various matters which are dealt with in that Schedule. The first part deals with simple balance sheets and profit and loss accounts of single companies, but it is provided that the provisions of the Schedule are to be relaxed in the cases of public utility companies, banking or discount companies, and assurance companies.

The important points to notice in the first part are that fixed assets are to be distinguished from current assets, and the various ways in which the amount at which assets stand is to be arrived at are laid down. A statement as to how the amount was arrived at is to be inserted. Further distinction is to be made between capital reserves, revenue reserves and "provisions" (other than provisions for diminution in value of assets), and where these have been increased the source of the increase must be explained, and where they have diminished the distribution of the amounts by which they have been diminished is to be stated. Investments have to be split up into trade investments and other investments quoted and unquoted, and notes must be attached dealing with such various matters as options to subscribe for shares, arrears of dividends, charges on the company's assets, contingent creditors, amount of estimated capital expenditure, so far as not provided for, a statement where appropriate that in the directors' opinion the market value of current assets is less than that stated, a statement of aggregate market value of quoted investments where different from the amount of investments as stated, the basis on which income tax provisions have been computed and for all items shown in the balance sheet a statement of the corresponding amounts shown the previous year.

There are also similar provisions relating to profit and loss accounts which have the object of distinguishing different kinds of income and expenditure and explaining various items.

The second part of the Schedule deals first with further provisions relating to a company's own accounts if that company is a holding company or a subsidiary company, and secondly with the requirements for consolidated accounts. The main object of these provisions is to show the financial relationship of the holding and subsidiary companies *inter se*, and if the accounts of any subsidiary are not included in the consolidated accounts, or if the financial year of a subsidiary is not the same as with the financial year of the holding company, an explanation for the reasons for both these facts must be given. It will be seen that these provisions are of a highly complicated nature and when they become law will require the very closest scrutiny. It is not practicable to examine them in detail here, and probably the easiest way to do this is by model accounts. The Bill also provides for a fuller circulation of the accounts (cl. 14).

The power of auditors is dealt with by cl. 15 of the Bill. Their report is to deal with the profit and loss account as well as (as at present) with the balance sheet. The matters to be stated in that report are to be found in Sched. II to the Bill. They are wider than the present requirements of the Act, though those requirements are to be found in the Schedule in slightly different wording. In addition, the auditors are to give their opinion on whether the accounts are prepared in accordance with the Bill's provisions and whether they think the reasons given for a subsidiary having

a different financial year from that of its holding company or a subsidiary not being dealt with in the consolidated accounts are satisfactory.

By cl. 15 (2) auditors are to be given greater opportunities of knowing about the affairs of the companies whose auditors they are, and by cl. 16 qualifications are imposed on the office of auditors. The most important qualification is membership of a body of accountants established in Great Britain and recognised by the Board of Trade.

The Bill also contains some fairly detailed provisions dealing with the appointment and remuneration of auditors (cl. 17). The provisions as to appointment are concerned mainly to provide that if no auditors are appointed, the Board of Trade may make the appointment, and to give auditors whom it is not proposed to reappoint a right of being heard by the company in general meeting. One of the objects of the remuneration provisions is to authorise a common practice whereby the company appoints auditors in general meeting and leaves the question of remuneration to be fixed by the board.

A CONVEYANCER'S DIARY

RESALE OF NEW MOTOR CARS—II

SINCE the appearance of the "Diary" of 7th September there have been developments in regard to the British Motor Trade Association's system of covenants to prevent the re-sale of new motor cars. The "Diary" in question was reprinted almost in full in the *Motor Trader* of 18th September, with the comment that if I was right in saying that a person sued for a penalty would be quite safe in paying £5 into court, thus being left with ample profit, my "description of the scheme as well-intentioned appears to be a comprehensive term."

More recently, reports have appeared in the press of two actions brought by the Association to enforce covenants, namely, *British Motor Trade Association v. Falco* (*The Times*, 30th November) and *British Motor Trade Association v. Alexander* (*The Times*, 18th December). In each case the association sued the owner of a new car for an injunction to restrain him from parting with the car. In neither case had the property in the car passed from the owner to the purchaser. In each case the hearing of the motion was, by consent, treated as the trial of the action, and, again by consent, a perpetual injunction was granted for the enforcement of the covenant. Mr. Falco appeared by counsel and made his surrender. Mr. Alexander surrendered in person. It does not appear that either defendant contemplated making a fight of it. As against Mr. Alexander, the association was given an inquiry as to damages, the costs of which were, however, reserved. Mr. Falco seems to have escaped an inquiry. Each defendant was ordered to pay costs down to and including those of the motion.

Now, this is all very interesting, and no doubt conveys to the general newspaper-reader that the scheme is working well. Nor can one withhold admiration from the association's detective system which unearthed these two proposed deals before they were perfected. That is certainly most remarkable in regard to a chattel, title to which passes by delivery. It does not appear from *The Times* what Mr. Falco and Mr. Alexander had actually done, but it speaks much for their good faith that they were found out. It is incredible that a person who really meant to conceal his operations could fail to take the elementary precautions necessary to make sure that title had passed by delivery before a writ and an interim injunction could, physically, be drawn up, issued, granted and served.

But the really interesting thing is that despite this admirable and comprehensive detective service, and the considerable publicity given to the fate of Mr. Falco and Mr. Alexander, no case has yet been reported, so far as I have seen, in which a dealer has sued for the "damages" prescribed by the covenant, after title had passed from the covenantee. Obviously, dozens of cases of that sort must have occurred since last August, when the covenant was introduced, and no doubt some of them have been detected by the methods which defeated Mr. Falco and Mr. Alexander. But we have not read of the interesting legal arguments which would necessarily have occurred in a contested case where the action was not for an injunction, the defendant having disposed of the ownership, but for damages. Are the "damages," of 45 per cent. of list price, plus purchase tax, anything but a penalty, and therefore, unenforceable? As stated in the "Diary" of 7th September, I was then, and I am still, of the opinion that

the "damages" are a penalty, owing to the means of arriving at the figure and the absence of any relation between that figure and the actual damage to the dealer. Oddly enough, this penalty is not large enough to be a deterrent if the figures given in the press (not in *The Times*) are to be believed: for Mr. Falco and Mr. Alexander are alleged to have been about to sell their cars for prices representing nearly a hundred per cent. profit on their outlay, thus leaving them about 50 per cent. net profit after paying the association and any incidental costs and expenses.

What is even more curious is that in the two cases which are known to have occurred, the reports I have seen do not suggest that the dealer was co-plaintiff with the association. So far as I can see, the dealer, in a case of this sort, would be entitled to an injunction on any view, because the covenant is supported by consideration moving from him. That is the one case in which I should have no doubt of the covenant's enforceability. But I gather that in each case the association sued alone. And I remain of the opinion, stated in the "Diary" of 7th September, that the association cannot be entitled to an injunction, since the association seems to be a volunteer. Two judgments by consent to the contrary do not in any way affect that view.

The upshot is this. I am still of the opinion that this is a well-intentioned scheme and that a workable scheme could be devised. At present the existing scheme looks as if it is working, so far as the ordinary newspaper-reader is concerned, and no doubt that fact has an important effect in making it work for the time being. But the time must come, sooner or later, when a defendant insists on fighting; if he does so, I believe that he will win an action for an injunction, where title has not passed, unless the dealer is plaintiff or one of the plaintiffs. Where title has passed, I suggest that the defendant should pay £5 into court, after which he will be reasonably safe in respect of his costs. Those concerned would be wise to put in hand an alternative scheme, so that it is ready for operation when the present one collapses.

WAR DAMAGE TO CHATTELS

In connection with my recent "Diary" on war damage payments (23rd November, 1946), the following personal experience may be of some interest. I was "bombed out" in September, 1940, being fortunate enough to save a good deal of my furniture from the flames. I recovered from the Board of Trade a proportion of my payment under Pt. II of the Act as long ago as 1942, to recoup me for certain repairs which had actually been done. Since 1941 I have been in a much smaller house, with the residue of my furniture. In 1946, having bought a larger house, I asked the Board of Trade for, and was given, the balance of the payment due, to help with getting the extra furniture. It was then suggested to me that some of the things might usefully be obtained on "dockets." So I wrote to the "docket" department of the Board of Trade, and received a printed rejection form. I wrote again and then received a form with four questions on it to be answered in a space 5 inches by 3, as follows: "1. Articles destroyed by enemy action (in detail); 2. Amount of War Damage compensation received for loss; 3. All articles of furniture you now possess (in detail); 4. Date of marriage."

The answers to the first and second of these questions were already in the possession of the war damage department of the Board of Trade, with which the "docket" department thus seems not to be in contact; the fourth seems to be decidedly irrelevant; while the third could not be answered in the space, particularly if the first were also being answered in the same space "in detail." I have written asking the

Board of Trade to take the matter seriously, and will report developments here. In the meantime solicitors may like to know that if they recover compensation for their partially "bombed-out" clients, the Board of Trade will try to force those clients to use it at inflated prices on the open market, and not on things sold at restricted prices on "dockets"; so the recipients need not be too cheerful at receiving it.

LANDLORD AND TENANT NOTEBOOK

THE REQUISITIONING OF FURNISHED DWELLINGS

Up to the time of writing no one appears to have challenged the power of the Minister of Health to requisition premises on the determining or determination of tenancies within the Furnished Houses (Rent Control) Act, 1946. It may be that the alleged power has not been exercised in as many cases as threats have been made to exercise it; also, the fact that the Minister has (if he has) a giant's power would not prevent him from realising that it might be tyrannous to use it as would a giant. But its existence appears not to have been questioned, and when *The Times* reviewed the operation of the Act on 2nd December last, the writer assumed, uncritically, that the Minister was authorised to requisition in "obvious cases of victimisation."

But is he? I propose to examine the legislative process said to produce the power, commencing with a perusal of Circular 198/46 issued on 16th October last by the Ministry of Health to clerks of local authorities in whose districts tribunals have been set up. The italics will be mine.

The circular is headed "Furnished Houses (Rent Control) Act, 1946. Delegation of powers to clerks of local authorities to requisition premises in cases of eviction *contrary to the intention of the Act.*" It then refers to the fact that there have been a number of cases "where *in spite of the protection* afforded by the Act . . . lessors have nevertheless evicted lessees and thus made them homeless," explains that while the lessees might apply to the courts, their homelessness would aggravate the shortage; and recites that *a more direct remedy is therefore necessary.* It then confers delegated power "to requisition occupied premises in cases of eviction or threatened eviction before the expiry of the period laid down under s. 5 of the Act."

Perhaps the first thing to be noted about this circular, in view of what is said to have happened in certain cases, is that it does not purport to authorise requisitioning on or after the expiration of a notice to quit. Cases have been reported in the Press in which, it seems, clerks to local authorities have considered themselves to be clothed with such authority; and the article in *The Times* to which I referred earlier read as if this were the position ("Tribunals cannot . . . prevent landlords giving tenants notice to quit except in obvious cases of victimisation, and that can be prevented by the local authority exercising its power to requisition the premises"). It would, indeed, be strange if the Minister, unlike the courts, were to seek the intention of the Act outside and beyond its wording, and to improve, by virtue of a measure passed in 1945, upon rights conferred and limited in 1946.

For the foundation of the power, if it exists, is provided by the Supplies and Services (Transitional Powers) Act, 1945, the nature and effect of which, together with the effect of S.R. & O., 1945, No. 1616, made under the Act, next call for examination. The statute has a long heading in which its object is described as "to provide for the application of certain defence regulations for purposes connected with the maintenance of supplies and services, for enabling defence regulations to be made for the control of prices and charges," and s. 1 (1) authorises the application of (expiring) defence regulations by Orders in Council for the purpose of so maintaining, controlling and regulating supplies and services as to bring about one of a number of things, arranged in four groups. The Order in Council so applied Defence Regulation 51. Of these groups I think only the first and fourth need be set out at all fully: they are (a) to secure a sufficiency of those

supplies and services essential to the well-being of the community or their equitable distribution or their availability at fair prices, and (d) to assist the relief of suffering and the restoration and distribution of essential supplies and services in any part of His Majesty's Dominions or in foreign countries that are in grave distress as the result of war.

I mentioned (d) because of the reference in Circular 198/46 to homelessness, which undoubtedly involves suffering; but reading the paragraph as a whole, I think it must be interpreted not only as being concerned only with suffering due to shortages, but also only to suffering due to shortages prevailing in at least a small area and affecting more than one person, such as a wrongfully evicted lessee.

It is perhaps more likely that he who challenged the action of the authority would be referred to (a), and a case might be made out for contending that the requisitioning made available at a fair price a supply or service, or both. But granted that a lessor might conceivably be said to supply accommodation or to render a service by so doing, it seems doubtful whether that was what the Legislature had in mind when using the expressions, and it will be noticed that, generally speaking, the Act, where it deals with prices, is concerned with prices of commodities which are bought and sold rather than with charges for the use of property.

It would seem, then, that, no doubt with the best of intentions, the Minister has sought to remedy a defect by summary methods but by methods not available to him. The clue to the situation is, I think, the passage in the circular which follows the reference to eviction and homelessness, and which I will now set out more fully. "The lessee in such circumstances may apply to the Courts *inter alia* for possession of the letting, but in the meantime the fact that he and his family are homeless aggravates the present difficulties due to the housing shortage." It may be that the "*alia*" include or are limited to forcible re-entry within the law. But if this is the explanation, it in effect imposes upon functionaries who are not properly equipped for such work the task of issuing interim injunctions. For, apart from cases in which requisitioning has been said to have been threatened after the determination of a tenancy, what one hears of is a lessee coming home from a hearing and finding himself excluded from, say, part of the lessor's property his rights to which may be the subject of a *bona fide* dispute. And what is a clerk to do if "eviction" is by forfeiture, leave having been granted?

The Emergency Powers Acts, 1939 to 1945, under which defence regulations were first made, went much further than does the Supplies and Services (Transitional Powers) Act, 1945, of which it is the function to continue in force with necessary adaptations certain of those regulations, but subject to the condition that one of the four purposes mentioned must be sought to be achieved (and S.R. & O., 1945, No. 1616, duly falls in with this scheme of things). The Emergency Powers (Defence) Act, 1939, by virtue of which reg. 51 was originally made, authorised the making of defence regulations which would go as far as to amend any enactment, suspend the operation of any enactment, etc. (s. 1 (2) (d)). Not that reg. 51 did any of these things, but the Government might have prevented recourse to the courts by suspending the relevant legislation if this had appeared necessary or expedient for the then existing purposes. It is true that Circular 198/46 does not contemplate depriving

COUNTY COURT CALENDAR FOR JANUARY, 1947

Circuit 1—Northumberland

HIS HON. JUDGE RICHARDSON
 Alnwick, Berwick-on-Tweed, Blyth, Consett, 24, Gateshead, 14, Hexham, Morpeth, 13, Newcastle-upon-Tyne, 16, 17 (J.S.), 30 (B.)
 North Shields, 23, Seaham Harbour, 27, South Shields, 29, Sunderland, 15, 28

Circuit 2—Durham

HIS HON. JUDGE GAMON
 Barnard Castle, Bishop Auckland, 28, Darlington, 15, 29
 *Durham, 14 (J.S.), 27, Guisborough, Leyburn, 13 (R.), Middlesbrough, 9, 23 (J.S.)
 Northallerton, 30, Richmond, 16, Stockton-on-Tees, 10, 21, Thirsk, 17 (R.), West Hartlepool, 22

Circuit 3—Cumberland

HIS HON. JUDGE ALLSBERG
 Appleby, Barrow-in-Furness, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Circuit 4—Lancashire

HIS HON. JUDGE PEEL, O.B.E., K.C.
 *Blackburn, 10, 17, 22 (R.B.), 24 (J.S.)
 *Blackpool, 7, 8, 9, 14 (J.S.), 15 (R.B.), 22, 23, Chorley, 16, Lancaster, 3, Preston, 6, 13 (R.B.), 21 (J.S.)

Circuit 5—Lancashire

HIS HON. JUDGE ORMEROD
 Accrington, 23, Bolton, 8 (J.S.), 22, 29, Burnley, 9, Bury, 6 (J.S.), 20 (R.), Colne, 24 (J.S.), Rochdale, 10 (J.S.), 17 (R.), Salford, 7 (J.S.), 13, 21, 27, 28 (J.S.)

Circuit 6—Lancashire

HIS HON. JUDGE KROSTWHAITE
 HIS HON. JUDGE HARRISON
 *Liverpool, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, St. Helens, 8, 22, Southport, 7, 21, Widnes, 10, Wigan, 9, 23

Circuit 7—Cheshire

HIS HON. JUDGE BURGESS
 Altrincham, 15 (J.S.), 22, *Birkenhead, 3, 8 (R.), 10, 16, 22 (R.), 29, Chester, 14, Crewe, 17, Market Drayton, 24, Nantwich, 31, *Northwich, 23, Runcorn, 28, *Warrington, 9, 30 (J.S.)

Circuit 8—Lancashire

HIS HON. JUDGE RHODES
 Leigh, 3, 10, 24, *Manchester, 8, 9, 10 (B.), 14, 15, 16, 20, 21, 22, 23, 24 (B.), 28, 29, 30

Circuit 10—Lancashire

HIS HON. JUDGE RALPH BATT
 *Ashton-under-Lyne, 10

Circuit 12—Yorkshire

HIS HON. JUDGE RICE-JONES
 *Bradford, 10 (J.S.), 13, 14, 16, 17, Dewsbury, 23, *Halifax, 24, *Huddersfield, 21, 22, Keighley, 7, Otley, 8, Skipton, 9, Wakefield, 15

Circuit 13—Yorkshire

HIS HON. JUDGE FESSENGH
 *Barnsley, 8, 9, 10, Glossop, 15 (R.), Pontefract, 13, 14, 15, Rotherham, 21, 22, *Sheffield, 7 (J.S.), 16, 17, 23, 24, 28 (J.S.), 30, 31

Circuit 14—Yorkshire

HIS HON. JUDGE STEWART
 Harrogate, 24, Leeds, 15, 16 (J.S.), 22, 23 (J.S.), 29, Ripon, Tadcaster, 21, Yarncliffe, 14

Circuit 16—Yorkshire

HIS HON. JUDGE GRIFFITH
 Beverley, 10, Bridlington, 6, Goole, 21 (R.), Great Driffield, 20, *Kingston upon Hull, 13 (R.), 14 (R.), 15, 16, 17 (J.S.), 20 (R.B.), 27 (R.)

Circuit 17—Lincolnshire

HIS HON. JUDGE SHOVE
 Barton-on-Humber, *Boston, 2 (R.), 9, 16 (R.B.)
 Brigg, Caistor, 27, Gainsborough, 15 (R.), 20, Grantham, 8 (R.), 17, 29 (J.S.), 30, 31, *Great Grimsby, 2 (R.B.), 15 (J.S.), 16, 29 (J.S.), 30, 31, *Hornsea, 23 (R.), *Hornsea, 24 (R.), *Hornsea, 25 (R.), *Hornsea, 26 (R.), *Hornsea, 27 (R.), *Hornsea, 28 (R.), *Hornsea, 29 (R.), *Hornsea, 30 (R.), *Hornsea, 31 (R.)

Circuit 18—Nottinghamshire

HIS HON. JUDGE CAPORN
 Doncaster, East Retford, Mansfield, Newark, *Nottingham, Worksop, (List not received)

Circuit 19—Derbyshire

HIS HON. JUDGE WILKS
 Alfreton, 14, Ashbourne, Bakewell, 28, Burton-on-Trent, 15 (R.B.)
 Buxton, Chesterfield, 17, 24, 31 (J.S.)
 *Derby, 21 (R.B.), 22, 29, 30 (J.S.)
 Ilkeston, 21, Long Eaton, 16, Matlock, New Mills, 13, Wirksworth, 23

Circuit 20—Leicestershire

HIS HON. JUDGE FIELD, K.C.
 Ashby-de-la-Zouch, 16, *Bedford, 14 (R.B.), 22, Hinckley, 15, Kettering, 21, *Leicester, 6, 7, 8 (J.S.), (B.), 9 (B.), 10 (B.), Loughborough, 14, Market Harborough, 13, Melton Mowbray, 24, Oakham, 17, Stamford, 20, Wellingborough, 23

Circuit 21—Warwickshire

HIS HON. JUDGE FINNEMORE
 HIS HON. JUDGE TUCKER (Add.)
 *Birmingham, 8, 9, 10, 13, 14 (B.), 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31

Circuit 22—Herefordshire

HIS HON. JUDGE LANGMAN
 Bromsgrove, 24, Bromyard, Evesham, 15, Great Malvern, 13, Hay, *Hereford, 21, 22, *Kidderminster, 7, 28, King's Norton, Ledbury, *Leominster, 20, Ripon, *Stourbridge, 16, 17, Tenbury, Worcester, 9, 10

Circuit 23—Northamptonshire

HIS HON. JUDGE FORBES
 Atherstone, Banbury, Bletchley, Chipping Norton, Coventry, Daventry, Leighton Buzzard, *Northampton, Nuneaton, Rugby, Shipston-on-Stroud, Stow-on-the-Wold, Stratford-on-Avon, Warwick, (List not received)

Circuit 24—Northamptonshire

HIS HON. JUDGE THOMAS
 Abergavenny, Abertillery, 14, Bargoed, 15, Barry, 9, *Cardiff, 6, 7, 8, 10, Chepstow, Monmouth, 21, *Newport, 23, 24, Pontypool and Blaenau, 17, 22, *Tredegar, 16

Circuit 25—Staffordshire

HIS HON. JUDGE WHITNEY
 *Dudley, 14, 21, 28, Redditch, 7, *Walsall, 9, 16, 23, 30, *West Bromwich, 8, 15, 22, 29, *Wolverhampton, 10, 17, 24, 31

Circuit 26—Staffordshire

HIS HON. JUDGE TUCKER
 *Hanley, 9, 23, 24, Leek, 13, Lichfield, 6, Newcastle-under-Lyme, 14, *Stoke-on-Trent, 8, Stone, 27, Tamworth, 10, Uttoxeter, 31

Circuit 28—Shropshire

HIS HON. JUDGE SAMUEL, K.C.
 Brecon, 17, Bridgnorth, 15, Bulth Wells, 9, Craven Arms, 8, Knighton, 7, Llandrindod Wells, 10, Llanfyllin, Llanidloes, Ludlow, 13, Machynlleth, Madeley, 16, Newtown, Oswestry, 14, Shrewsbury, 20, 23, *Wallington, 21, Welshpool, Whitchurch, 22

Circuit 29—Caernarvonshire

HIS HON. JUDGE EVANS, K.C.
 *Bangor, Blaenau Ffestiniog, *Caernarvon, Colwyn Bay, Conway, Corwen, Denbigh, Dolgelly, Flint, Holyhead, Holywell, Llandudno, Llanfenni, Llanwrst, Menai Bridge, Mold, *Portmadoc, Pwllheli, Rhyl, *Ruthin, Wrexham, (List not received)

Circuit 30—Glamorgan

HIS HON. JUDGE WILLIAMS, K.C.
 *Aberdare, 7, Bridgend, 27 (R.), 28, 29, 30, 31, Caerphilly, 23 (R.), Merthyr Tydfil, 9, *Mountain Ash, 8, Neath, 27, 23, 24, *Pontypridd, 14, 15, 16, 17, *Porth, 13, Port Talbot, 21, *Ystradgynlais, 17

Circuit 31—Glamorgan

HIS HON. JUDGE WILLIAMS, K.C.
 *Aberdare, 7, Bridgend, 27 (R.), 28, 29, 30, 31, Caerphilly, 23 (R.), Merthyr Tydfil, 9, *Mountain Ash, 8, Neath, 27, 23, 24, *Pontypridd, 14, 15, 16, 17, *Porth, 13, Port Talbot, 21, *Ystradgynlais, 17

Circuit 32—Norfolk

HIS HON. JUDGE PUGH
 Beccles, 7, Diss, 14, Downham Market, 9, East Dereham, Fakenham, *Great Yarmouth, 2, Harleston, Holt, *King's Lynn, 16, Lowestoft, 8, North Walsham, *Norwich, 20, 21, 22, Swaffham, 29, Thetford, 28

Circuit 33—Essex

HIS HON. JUDGE HILDESLEY, K.C.
 Braintree, 10, *Bury St. Edmunds, 21, Chelmsford, 14, Clacton, 28, Colchester, 15, 16, Felixstowe, 29, Halesworth, Harlow, 24, Ipswich, 8, 9, Maldon, 3, Saxmundham, 6, Stowmarket, 17, Sudbury, 22, Woodbridge, 13

Circuit 34—Middlesex

HIS HON. JUDGE TUDOR REE
 Brentford, 13, 15, 17, 20, 24, 27, 29, 31, Uxbridge, 14, 28

Circuit 35—Cambridgeshire

HIS HON. JUDGE CAMPBELL
 Biggleswade, 7

Circuit 36—Berkshire

HIS HON. JUDGE HURST
 *Aylesbury, 17, 30 (R.B.)
 Buckingham, 28, Cheltenham, 14, 15, Henley-on-Thames, High Wycombe, 16, Northleigh, 13, Oxford, 9, 13 (R.B.), 27, Reading, 16 (R.B.), 22, 23, 24, Tewkesbury, 20, Thame, Wallingford, 20, Wantage, Witney

Circuit 37—Middlesex

HIS HON. JUDGE SIR GERALD HARGREAVES
 *St. Albans, 21, 24, West London, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31

Circuit 38—Middlesex

HIS HON. JUDGE DOME
 Burnley, 14, 28, 31, *Edmonton, 16, 17, 21, 23, 24, 30, 31, Hertford, 20, Watford, 15, 22

Circuit 39—Middlesex

HIS HON. JUDGE ENGELBACH
 Shorefield, 13, 14, 16, 17, 20, 21, 23, 24, 27, 28, 30, 31, Windsor, (List not received)

Circuit 40—Middlesex

HIS HON. JUDGE ALCHIN
 HIS HON. JUDGE DRUGGER (Add.)
 Bow, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31

Circuit 41—Middlesex

HIS HON. JUDGE EAKLEY, K.C.
 HIS HON. JUDGE TREVOR HUNTER, K.C. (Add.)
 Clerkenwell, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31

Circuit 42—Middlesex

HIS HON. JUDGE DAVIES, K.C.
 Bloomsbury, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31

Circuit 43—Middlesex

HIS HON. JUDGE BENSLEY WELLS
 Marylebone, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31

Circuit 44—Middlesex

HIS HON. JUDGE DRUGGER
 HIS HON. JUDGE DAVIES, K.C. (Add.)
 Westminster, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31

Circuit 45—Surrey

HIS HON. JUDGE JASCOCK, M.C.
 HIS HON. JUDGE HURST (Add.)
 *Kingston, 10, 14, 17, 21, 24, 28, 31, *Wandsworth, 8, 9, 13, 15, 16, 20, 22, 23, 27, 29, 30

Circuit 46—Middlesex

HIS HON. JUDGE REES
 *Willesden, (List not received)

Circuit 47—Kent

HIS HON. JUDGE DAYNES, K.C.
 HIS HON. JUDGE HURST (Add.)
 Southwark, 13, 17, 20, 24, 27, 31, Woolwich 15, 16, 23, 30

Circuit 48—Surrey

HIS HON. JUDGE COLLINGWOOD
 HIS HON. JUDGE DALE
 Dorking, 16, Epsom, 7, 8, 14, 15, 22, *Guildford, 9, 21, 30, Horsham, 23, Lambeth, 6, 7, 10, 13, 14, 15, 17, 20, 22, 24, 27, 28, 31, Redhill, 29

Circuit 49—Kent

HIS HON. JUDGE CLEMENTS
 Ashford, *Canterbury, Cranbrook, Deal, Dover, Folkestone, Hythe, Maidstone, Margate, Ramsgate, *Rochester, Sherness, Sittingbourne, Tenterden, (List not received)

Circuit 50—Sussex

HIS HON. JUDGE ARCHER, K.C.
 Arundel, 31, Brighton, 9, 10, 16, 23, 24, 30, *Chichester, 17, *Eastbourne, 15, *Hastings, 7, Haywards Heath, 29, Lewes, 6, Petworth, Worthing, 21

Circuit 51—Hampshire

HIS HON. JUDGE TOPHAM, K.C.
 Aldershot, Basingstoke, 8, Bishops Cleeve, 22, *Newport, Petersfield, 17, *Portsmouth, 6 (B.), 9, 16, 23, Romsey, Ryde, 29, *Southampton, 7, 8 (B.), 14, 21, 24, Winchester, 15

Circuit 52—Wiltshire

HIS HON. JUDGE JENKINS, K.C.
 Bath, Calne, Chippenham, Cirencester, Devizes, Dursley, Frome, Hungerford, Malmesbury, Marlborough, Melksham, *Newbury, Stroud, Swindon, Trowbridge, Warminster, Wincanton, (List not received)

Circuit 54—Somersetshire

HIS HON. JUDGE WETHERED
 *Bridgwater, 17, *Bristol, 10 (B.), 13, 14, 15, 16, 20 (J.S.), 21, 22, 23, 24 (B.), Gloucester, 6, 28, Minehead, 14 (R.), Newent, 9 (R.), Newnham, 10 (R.), Thornbury, 27, Wells, 7, Weston-super-Mare, 8

Circuit 55—Dorsetshire

HIS HON. JUDGE ARMSTRONG
 Andover, 8 (R.), Blandford, Bournemouth, 14, 15, 16, 23 (R.), Bournemouth, 28, Crewkerne, 14 (R.), Dorchester, 10, Lynton, *Poole, 21, 22 (R.), Ringwood, Salisbury, 6, Shaftesbury, 2, Swanage, Weymouth, 7, Wimborne, *Yovil, 9

Circuit 56—Kent

HIS HON. JUDGE SIR GERALD HURST, K.C.
 Bromley, 21, 22, *Croydon, 13, 14, 15, 17, 24, 29, Dartford, 16, East Grinstead, 28, Gravesend, 20, Harlow, 27, Tonbridge, 30, Tunbridge Wells, 23

Circuit 57—Devonshire

HIS HON. JUDGE THESIGER
 Axminster, 13 (R.), *Barnstaple, 28, Bideford, 29, Chard, 16 (R.), *Exeter, 16, 17, Honiton, 20, Langport, 27, Newton Abbot, 23, Okehampton, 24, South Molton, Taunton, 13, Tiverton, 22, *Torquay, 14, 15, Torrington, Totnes, Wellington, 20 (R.)

Circuit 58—Essex

HIS HON. JUDGE TREVOR HUNTER, K.C.
 HIS HON. JUDGE ANDREW BRENTWOOD, 17 (R.), Gray's Thurrock, 7 (R.), Ilford, 6 (R.), 8, 9, 13 (R.), 14, 15, 16, 20 (R.), 21, 22, 23, 27 (R.), 28, 29, 30, *Southend, 8, 9 (R.), 10, 15 (R.B.), 16, 22 (R.), 30, 31

Circuit 59—Cornwall

HIS HON. JUDGE ARMSTRONG
 Bodmin, Camelford, Falmouth, Helston, 14, Holsworthy, (B.), 14, 21, 24, *Winchester, 15

The Mayor's & City of London Court

HIS HON. JUDGE DORSON
 HIS HON. JUDGE BEAZLEY
 HIS HON. JUDGE THOMAS
 HIS HON. JUDGE MCCLURE
 Guildhall, 13, 14, 15, 16, 17 (J.S.), 20, 21, 22 (A.), 23, 24 (J.S.), 27, 28, 29 (A.), 30, 31 (J.S.)

*** = Bankruptcy Court****† = Admiralty Court****(R.) = Registrar****(J.S.) = Judgment Summons****(B.) = Bankruptcy****(R.B.) = Registrar in Bankruptcy****(Add.) = Additional Judge****(A.) = Admiralty**

"evicted" lessees of their rights to take action in the courts, but it does seem plausible that a lessor, when action taken by him is said to be "contrary to the intention" of a statute, still has a right to have two issues tried by a judicial tribunal, namely, whether the action taken is in fact contrary

to such intention, and whether it is in law also contrary to the statute. I can see nothing in the Supplies and Services (Transitional Powers) Act, 1945 (or in S.R. & O., 1945, No. 1616) authorising any Government department to deprive a lessor of such rights.

TO-DAY AND YESTERDAY

December 23.—The death of Lord Neaves on 23rd December, 1876, left a great blank among the Scottish judges. He had been a judge of the Court of Session since 1852 and had performed his duties till within three or four days of his decease. He was one of the greatest case lawyers of his day and stood among the foremost authorities on the criminal law of Scotland. He was also a leader of literary society in Edinburgh. He contributed regularly to "Blackwood's Magazine," his subjects ranging from deeply learned articles on Grimm's philological works to rollicking songs and satirical verses. His volume on "The Greek Anthology" contained many graceful translations and showed his wide knowledge of the classics.

December 24.—There is record that in the fifteenth century many members of Gray's Inn were buried in the Grey Friars' Church in Newgate Street, now Christ Church. Thus among them Camden notes "Willus Anne, generosus de Gray's Inn, filius et haeres Alexandri Anne, Recordatoris civitatis London, qui obiit December 24, 1451."

December 25.—Under the Commonwealth gaming at Christmas was forbidden in the Inns of Court, but after the Restoration, in 1661 and 1662, the orders against it were dispensed at Gray's Inn.

December 26.—Walter Pye was called to the Bar by the Middle Temple in 1597. He became Chief Justice of Glamorgan, Brecknock and Radnor in 1617 and Attorney-General of the Court of Wards and Liveries and a knight in 1621. He died on 26th December, 1635, and was buried at Much Dewchurch in Herefordshire.

December 27.—Gaming was a feature of Christmas at all the Inns of Court during the Restoration period, and on 27th December, 1662, it was ordered at the Inner Temple "that there be but one hazard table and that in the Upper Library only."

December 28.—Charles Pratt was appointed Chief Justice of the Common Pleas and knighted on 28th December, 1761, having been Attorney-General since 1757. He wrote to a friend: "I remember you prophesied formerly that I should be a Chief Justice or perhaps something higher. Half is come to pass. I am Thane of Cawdor, but the greater is behind; and if that fails me you are still a false prophet. Joking aside—I am retired out of this bustling world to a place of sufficient profit, ease and dignity; and I believe that I am a much happier man than the highest post in the law could have made me." His position as Chief Justice was far from being one of ease. It fell to him to determine the great constitutional point that the issue of general warrants by secretaries of state was a usurpation which no prescription could justify. He was raised to a great height of popularity. The City of London presented him with its freedom in a gold box and commissioned Reynolds to paint his portrait for the Guildhall. Another gold box contained the freedom of Exeter, which likewise hung up his portrait in its Guildhall. Dublin, Norwich and Bath also honoured him. In 1765 he was raised to the peerage as Baron Camden, and in the following year he became Lord Chancellor, holding the Great Seal till 1770. In 1786 he received an earldom.

December 29.—James O'Brien, called to the Irish Bar in 1831, was a Roman Catholic in religion and a Liberal in politics. He became a Queen's Counsel in 1841 and was appointed third serjeant in 1848 and second serjeant three years later. In 1858 he was made a judge of the Queen's Bench. He died on 29th December, 1881, in St. Stephen's Green. He was a sound lawyer, courteous to practitioners and suitors and a merciful and conscientious criminal judge.

At a meeting of the Law Students' Debating Society, held at The Law Society's Court Room, on Tuesday, 3rd December, 1946 (chairman Mr. J. E. Terry), the subject for debate was "That the case of *Property Holding Company v. Mischoff* (1946), 62 T.L.R. 568, was wrongly decided." Mr. P. L. Burgin opened in the affirmative; Mr. H. J. Dowding opened in the negative. Miss R. Eldridge seconded in the affirmative; Mr. C. M. Noel seconded in the negative. The following members also spoke: Messrs. Baxter, Beatty, Greenby, Goodall, Registrar Jones, Selby and Homfrey Davies. The opener having replied, and the

THE FALLEN MURAL

It appears that not long ago a large mural decorating the wall above the judicial chair in the Federal Court at Pittsburgh fell to the floor, fortunately while the court was not in session. It was completed ten years ago, depicting industrial scenes in the district, embellished with the scales of justice and other suitable designs. Few murals in this country are likely so to place the administration of justice in peril. The vast Arthurian scenes dominating the present House of Lords' chamber are so placed that their fall would inflict no personal injuries. It is in the Hall of Lincoln's Inn that the greatest havoc could be wrought, should the vast assembly of law-givers painted by G. F. Watts, on the wall at the northern end of the new hall, prove too much for its surface. At lunch time it might well annihilate the Benchers. To the artist it was his masterpiece. He undertook it without fee, asking only the cost of the materials and, toiling for five years, he finished it in 1859. The Society recompensed the gesture by inviting him to dinner and presenting him with a gold cup and a purse containing five hundred sovereigns. The work certainly covers the subject for the thirty-three gigantic figures include representations of Justice, Mercy, Religion, Moses, Zoroaster, Confucius, Draco, Justinian and Edward I. Some are inclined to wonder a little at the inclusion of Attila in this particular company. One point, however, lends them all a reassuring stability; many of them are recognisably eminent Victorians in fancy dress. Look closely at Minos and you recognise Alfred, Lord Tennyson. The whole composition, forty-five feet wide and forty feet high, has escaped the cataclysmic perils of the last war and the milder bombardment of the war before last, but it is fading steadily away. For one story connected with it the present writer does not vouch, though he heard it on good authority. It is said that a fairly recent perusal of the Society's insurance policies revealed the fact that for half a century or so premiums had been paid on a policy of insurance, the terms of which were so expressed as to protect the great work against the risk of burglary.

NO MORE CROWDS

When John Mathieson was hanged recently at Pentonville, police reinforcements stood by ready to deal with any demonstrators, but only a solitary sightseer was present to witness the posting up of the certificate of execution. He had heard the death sentence at the Old Bailey and "had to be in at the end." This marks an extraordinary contrast to the doings in the first half of the 19th century, the broadsheets avidly bought from hawkers, "last words" and "confessions," grotesquely illustrated with figures swinging from gibbets, the "beautiful prospects" and "comfortable rooms" overlooking the final scene, advertised for the accommodation of the wealthy who chose to hire them. Mobs of 100,000 were known to assemble on special occasions. Barriers had to be erected to control the crowds, and warning notices were posted up at the avenues of approach, perhaps reminding the curious that thirty-four people were pressed to death in the throng at an earlier execution. The scene at the hanging of Courvoisier in 1840 for the murder of Lord William Russell was typical. *The Times* reported: "We believe it to be a moderate calculation when we say that 20,000 persons at least must have witnessed this memorable execution. So great, indeed, was the anxiety felt to procure a favourable station that some hundreds of individuals had taken up their position . . . on the previous night . . . The windows of the neighbouring houses were all occupied by spectators . . . while others ascended the roofs."

Chairman having summed up, the motion was lost by nine votes. There were twenty-six members and one visitor present.

On Tuesday, 10th December, 1946 (chairman, Mr. J. M. Shaw), the subject for debate was "That this House views with alarm any attempt to abolish capital punishment." Mr. B. W. Main opened in the affirmative; Mr. C. W. Denniss opened in the negative. The following members also spoke: Messrs. J. E. Terry, L. E. Long, R. Watson, J. M. Ritchie, B. Greenby and E. D. Syson. The opener having replied, and the chairman having summed up, the motion was carried by four votes. There were twenty-eight members and two visitors present.

COUNTY COURT LETTER

The Wages of Directed Employees

IN *Dawson v. Teddy Toy Co., Ltd.*, at Stoke-on-Trent County Court, the claim was for £75 for wages due. The plaintiff was a labourer, and his case was that in March, 1944, he was directed into the employment of the defendants and he worked for them until the 10th September, 1945. On the 8th September, a notice posted up in the works caused dissatisfaction, and thirty-eight labourers (including the plaintiff) went for advice to the Employment Exchange. The plaintiff and three others afterwards presented themselves for work, but were unable to gain admission to the factory. A notice stated that the thirty-eight men would not be allowed to resume work until information was received from the Employment Exchange. The defendants subsequently stated that the plaintiff and other labourers had been dismissed for industrial misconduct, viz., walking out and leaving other employees without means of working. A subsequent notice stated that the good attendance bonus (the source of the dispute) would be reinstated. Appeals against the dismissals were allowed by the local appeal board, and the defendants were directed to re-employ the plaintiff, but they refused to do so. The defendants then applied to the National Service Officer for permission to discharge the plaintiff and others on the ground of redundancy. This permission was refused at first, but was allowed by the local appeal board. In the meantime, the plaintiff obtained temporary work elsewhere. His claim was for wages from the 10th September, 1945, to the 23rd January, 1946—the date of the trial in the county court, i.e., nineteen weeks. The defence was that the right to wages had ceased in the above circumstances. In a reserved judgment, His Honour Judge Tucker held that the plaintiff was entitled to wages for the nineteen weeks—less the amount earned elsewhere. Judgment was given for the plaintiff for £68 3s. 10d., with costs.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber and a stamped addressed envelope.

Undivided Shares—FREEHOLDS AND COPYHOLDS—TRANSITIONAL PROVISION—LAW OF PROPERTY ACT, 1925, SCHED. I, PT. IV, PARA. 1 (2)—CONVEYANCE AFTER 1925 TO TWO AS TENANTS IN COMMON—EFFECT

Q. A and his two sisters, B and C, purchased two small freehold properties before 1st January, 1926, as tenants in common, and also some copyhold land. A died in March, 1926, and by his will appointed B and C his executors and gave them his residuary estate, which comprised his share of the aforesaid properties, no assent in respect of which has been executed; but the probate of his will was duly registered in the North Riding of Yorks Deeds Registry. A compensation agreement was executed in respect of the copyhold property to B and C in 1935. B and C purchased another property in December, 1926, which was conveyed to them as tenants in common. B died in October, 1945, and by her will appointed her husband and C executors thereof, and gave a life interest in her residuary estate to her husband, and on his death the residuary estate to C. Probate of her will has been duly registered in the North Riding of Yorks Deeds Registry. The question now arises what, if anything, should be done; or whether matters may safely be left as they are until the death of B's husband, when, it is assumed, a separate assent by C to herself of each property will have to be executed.

A. As to the property purchased prior to 1926: the legal estate is in C upon the statutory trusts. (See as to freeholds the Law of Property Act, 1925, Sched. I, Pt. IV, para. 1 (2), and as to copyholds the Law of Property Act, 1922, Sched. XII, para. (8), proviso (iv), and the Law of Property Act, 1925, Sched. I, Pt. IV, para. 1 (2)). The equitable interest in these properties is as to an undivided moiety in C absolutely, and as to the other such moiety in B's husband for life, with remainder to C. As to the property purchased in December, 1926: if this property was actually conveyed to B and C as tenants in common the effect was to raise the statutory trusts (Law of Property Act, 1925, s. 34 (2)) over the legal estate. Whatever mode of assurance was in fact adopted, a trust for sale was created. The legal estate is in C upon such statutory or other trusts. The equitable interest is held in the same manner as is that in the pre-1926 purchase.

On the death of B's husband C should convey both sets of property to herself free of the trusts hitherto affecting the same. An assent would not be a possible mode of assurance as C will not be functioning as a personal representative. If C predeceased B's husband her personal representative could deal with the property (Trustee Act, 1925, s. 18 (2), (3)).

No action is thus imperative, but it might be advisable to appoint now one or more trustees to act with C.

We assume that A's will made B and C tenants in common of his residuary estate.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL]

Solicitors' Right of Audience

Sir,—The letter "Fusion of the Professions" in your issue of 14th December raises the whole question of the rights of solicitors in this country. To a solicitor who has practised in Australia for over twenty years, it appears that an extension of the rights of solicitors here is long overdue, if the interests of the client and the efficiency of the whole legal process are to be safeguarded.

In New South Wales both branches of the profession are as distinct as in England, but solicitors have the right of audience before every court in the land. I myself, for example, have at various times appeared as advocate in the higher courts, including the Court of Criminal Appeal, when the client had not sufficient funds to employ counsel. In the Central Criminal Court, Bankruptcy, Probate, and Divorce Courts, quarter sessions and district courts, both in chambers and other causes, solicitors frequently appear in opposition to counsel without the client's interests being jeopardised or the prestige of the Bar being prejudiced in the more important matters. In all the other Australian States (five in number) the professions are fused, but members mostly elect to practise in one branch or the other.

Consideration of the question from the comparative standpoint, taking into account the status of the two professions in countries which have successfully attacked the very problems facing lawyers in England, might lead to a satisfactory solution. Both the law and the legal machinery of New South Wales are closely allied in spirit and in detail to the legal system in England. For that reason the solution of the problem that has been attempted there is pertinent and worthy of consideration.

Bayswater, W.2.

C. M. P. HORAN.

REVIEW

The Law of Master and Servant. By A. S. DIAMOND, M.A., LL.D., of Gray's Inn, Barrister-at-Law. Second Edition. 1946. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 25s. net.

It is true of this book, as it is of relatively few legal text-books published in the last twenty years, that in its short existence since 1932, it has become a standard work, used and quoted by bench and bar. Its design follows the scheme popularised in Bowstead's Law of Agency of laying down the principle of law in an article of a few sentences and following it up with a short exposition and full illustrations. The work is distinguished not only by its clarity and accuracy, but also by a certain boldness. For instance, in art. 42, the principle is stated: "Unless the contract of service or apprenticeship contains an express or implied provision to the contrary, a master is bound, while the contract subsists, to pay the remuneration during the absence through illness of the servant or apprentice." In a footnote, the learned author agrees that in *O'Grady v. Saper, Ltd.* [1940] 2 K.B. 469 (which he calls an "unsatisfactory decision" in his preface) the Court of Appeal held that that was not the rule, the sole question being, what do the terms of the contract provide. The learned author relies on an "unbroken line of authority" from at least 1760 to *Morrison v. Bell* [1939] 2 K.B. 187, and cites that case as authority that a servant receiving benefits under the National Health Insurance Acts is not thereby prevented from receiving wages during illness. MacKinnon, L.J., in *O'Grady v. Saper*, considered *Morrison v. Bell* to have been unnecessarily reported. The learned author's view is amply backed by authority, although the Court of Appeal decision seems more reasonable. Without going further into the matter, one cannot help admiring the author's courage in setting up his opinion so firmly against that of a unanimous Court of Appeal. This volume is of both convenient size and encyclopædic content, is beautifully bound and printed, and well deserves its success as a leading text-book.

NOTES OF CASES

COURT OF APPEAL

Wright and Another v. Arnold

Morton, Somervell and Asquith, L.JJ.

1st November, 1946

Landlord and tenant—Rent restriction—Premises consisting of living rooms over shop—Sub-lease of living rooms without landlord's consent—Determination of head tenancy—"Lawfully sublet"—Whether premises a dwelling-house—Burden of proof—Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17) s. 15 (3)—Increase of Rent and Mortgage Interest (Restrictions) Act, 1938 (1 & 2 Geo. 6, c. 26), s. 7 (1).

Appeal from a decision of His Hon. Judge Hancock, given at Wandsworth county court.

The plaintiffs were respectively the freeholder and the leaseholder of premises at 89, Hill Road, Streatham. On 6th February, 1931, the freeholder demised them to James Walker (Jeweller) Ltd. The lease, which described the premises as "all that message shop and premises," was for fourteen years from 25th December, 1930, at an annual rent of £550 a year, and, besides the usual covenants for repairs and payment of rent, made detailed provision with regard to the kind of business which might be carried on there. There was also a covenant by the company not to assign or underlet without the freeholder's consent, and a proviso for re-entry on breach of covenant. While the parties thus contemplated that some business would be carried on at the shop, no obligation was placed on the company to do so, nor was there any prohibition against use of the premises as a dwelling-house. In 1937 the ground floor and basement were sub-let by the head lessees, with the freeholder's consent, to Delta Radio, Ltd., at a rent of £450 a year. On 25th March, 1939, the head lessees sub-let the upper part of the premises at £90 a year to the defendant, Mrs. Arnold, the licence of the freeholder not being obtained in respect of that sub-letting. On 18th March, 1941, the head lessees, in a letter about rent, referred to the fact that the upper part of the premises was let to the defendant sub-tenant. The freeholder replied agreeing to accept a reduction in the rent, and thereafter accepted rent with knowledge, thus acquired, of the unlicensed sub-letting. In March, 1944, the head lessees again wrote to the freeholder a letter referring to the unlicensed sub-tenancy, of which particulars were given. On expiry of the head lease, the plaintiff Bowers took a lease of the premises. As he wanted vacant possession, he brought this action against the sub-tenant, in which the freeholder joined, alleging that she was a trespasser, and claiming possession and mesne profits. The county court judge held that the onus was on the sub-tenant to show that the premises were lawfully sub-let; that the freeholder's waiver of the right of forfeiture did not render legal what had at all times been illegal; and that the plaintiffs were entitled to possession, since she was not, in his opinion, a person to whom the premises had been "lawfully sub-let" within the meaning of s. 15 (3), of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. By that subsection: "Where the interest of a tenant of a dwelling-house to which this Act applies is determined . . . any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall . . . be deemed to become the tenant of the landlord . . ." By s. 7 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938: "If any question arises in any proceedings whether the principal Acts apply to a dwelling-house, it shall be deemed to be a dwelling-house to which those Acts apply unless the contrary is shown." The sub-tenant appealed.

MORTON, L.J., said that the judgment of the county court judge foreshadowed the dissenting judgment of du Parc, L.J., in *Norman v. Simpson* [1946] 1 K.B. 158; 90 Sol. J. 91. It was argued for the freeholder and the leaseholder here that s. 15 (3) of the Act of 1920 did not apply where the tenant who did the sub-letting was not tenant of a dwelling-house to which the Act applied, its application being limited to cases where the tenant of a house to which the Acts applied sub-let a part thereof. It seemed to him that that was the natural meaning of the subsection, as appeared from its opening words. The argument for the freeholder and the leaseholder that it was for the sub-tenant to show that the premises came within the wording of s. 15 (3), which she had not done, was, however, met by s. 7 (1) of the Act of 1938. It was argued for the sub-tenant that that subsection was a complete answer to the freeholder's argument under s. 15 (3) of the Act of 1920, and that the freeholder had only to fail to discharge the onus laid upon him by s. 7 (1) for the sub-tenant to succeed. He (his lordship) did not think that s. 7 (1) had such a far-reaching effect. It could, he thought,

only apply where it was first established that the premises as to which the question arose were a dwelling-house as defined in the principal Act. The intention of s. 7 (1) was that, when the court was satisfied that the building in question was a dwelling-house, then it should be deemed to be a dwelling-house to which the Act applied until the contrary was shown. His lordship then considered the evidence in the light of the definition of "dwelling-house" in s. 12 (2) of the Act of 1920 and s. 3 (3) of the Act of 1939, and said that the fair conclusion was that the premises were of the familiar type, a shop with dwelling-rooms above, and a "dwelling-house" within the meaning of the Acts. The burden was thus on the freeholder to show that the premises were not within the Acts, and he had failed to discharge it because there was no evidence of rateable value. The sub-tenant had, therefore, brought herself within s. 15 (3) of the Act of 1920, and the appeal must be allowed.

SOMERVELL, L.J., gave judgment agreeing.

ASQUITH, L.J., agreed.

COUNSEL: Brundrit (W. G. Wingate with him); Comyn (Malcolm Wright with him).

SOLICITORS: Warren & Co.; Sherrard & Sons.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re Swanson's Agreement; Hill v. Swanson

Evershed, J. 31st October, 1946

Landlord and Tenant—Tenant asks landlord to consent to assignment—Landlord refuses—Ground of refusal that assignee would become statutory tenant—Whether refusal unreasonable.

Adjourned summons.

By a tenancy agreement dated the 1st June, 1942, the landlord let to the tenant a dwelling-house for two years from the 1st June, 1942, and so on from quarter to quarter until the tenancy should be determined by either party giving to the other three calendar months' notice. The rent was £108. By paragraph 2 (f) of an agreement it was provided that "The tenant will not assign . . . the premises without the landlord's previous consent in writing . . . such consent not to be unreasonably withheld in the case of a respectable and responsible . . . assignee." By a letter dated the 22nd February, 1944, the landlord informed the tenant that the rent would, as from the 6th April, be £115, which was the standard rent. On 28th February the tenant replied pointing out that the tenancy did not terminate until 31st May, 1944. The landlord thereupon wrote asking the tenant to treat the letter of the 22nd February as an intimation of an increase of rent from the 1st June. The increased rent was paid from that date and the tenant continued in occupation. In June, 1946, the tenant wrote to the landlord stating that she desired to assign the premises and asking for her consent. The landlord's solicitors replied on the 20th June, 1946, refusing consent and serving the tenant at the same time with three months' notice to quit. There was no question as to the respectability or responsibility of the proposed assignee. The landlord refused her consent on the ground that, if the assignee went into possession for any period, however short, before the determination of the contractual tenancy, he would obtain the benefit of the Rent Restriction Acts and the landlord wished to get for herself or for some tenant of her choice possession of the premises. The tenant by this summons asked whether, on the true construction of the tenancy agreement, the landlord had unreasonably withheld her consent to the proposed assignment. At the hearing the further question was raised whether the tenancy had not determined in 1944, with the result that at all material times in 1946 the tenant was only a statutory tenant.

EVERSHED, J., said that he would first deal with the matter on the footing that there subsisted at the date when the tenant gave to the landlord notice of her intention to assign a contractual tenancy. The question was whether it was unreasonable to refuse consent to an assignment, in other respects unimpeachable, in order to obtain for herself such advantages as might be obtained in the way of getting actual vacant possession. In the absence of authority this might well be said not to be an unreasonable act. The matter was not free from authority. He referred to *Houlder Brothers & Co., Ltd. v. Gibbs* [1925] Ch. 575; 69 Sol. J. 541, decided by Tomlin, J., and the Court of Appeal. It was there held that grounds of objection unconnected with the person of the assignee or the user or occupation of the premises were not reasonable. In *Lord Tredegar v. Harwood* [1929] A.C. 72, two of the noble lords had expressed doubt as to the correctness of that decision. It was, however, still binding. According to the authorities the landlord here must be taken to have been unreasonable. If the contractual tenancy had determined at any date before the tenant called upon the landlord

to consent to the assignment, the right to assign, qualified or unqualified, which the defendant had under the contract, had ceased. He had come to the conclusion that the true view was that from the 1st June, 1944, the tenant was a statutory tenant only.

COUNSEL: *Fawell; Noakes.*

SOLICITORS: *Routh, Stacey, Hancock & Willis; Barfield, Child, Barry, Lucas & Sons.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Nos. 36, 38, 40 and 42 Jamaica Street, Stepney

Vaisey, J. 22nd November, 1946

Emergency legislation—War damage—Walls damaged by enemy action—Damage necessitates rebuilding—Walls defective at date of damage—Whether War Damage Commission liable for entire cost of rebuilding—War Damage Act, 1943 (6 & 7 Geo. 6, c. 21), s. 8.

Appeal from a determination of the War Damage Commission.

The appellants owned four houses in a street in Stepney. The houses were structurally damaged by blast from a bomb which exploded near them, with the result that the greater part of the front walls had to be rebuilt. These walls were in a bad condition prior to the bombing. The War Damage Commission agreed to pay 40 per cent., subsequently reduced to 33½ per cent., of the cost of rebuilding. The appellants appealed against the determination of the Commission to pay less than the full cost of the rebuilding. The War Damage Act, 1943, s. 2, defines "war damage" as meaning "... damage occurring (whether accidentally or not) as the direct result of action taken by the enemy." Section 8 lays down the method of computing a cost of works payment. Subsection (2) provides: "If the war damage is made good by reinstating the hereditament in the form in which it existed immediately before the occurrence of the damage, the amount of the payment shall be an amount equal to the proper cost of the works executed for the making good thereof."

VAISEY, J., said that the Commission had submitted that if the unsoundness of the building were of such a character that the war damage was greater than it would have been if the building had previously been in perfect condition, then the Commission should not be called on to pay more towards the cost of reinstatement than they would have been called on to pay to restore the hypothetically sound building. His difficulty in accepting that was two-fold: first, he could not find that the Commission had ever applied such a formula; secondly, it would be impossible to apply it to any case without an inquiry, which could rarely be satisfactorily answered, for it was well known that a well-built rigid structure might suffer greater damage from blast than an old building possessing qualities of suppleness, resilience and flexibility. There was no finding that these walls would have fallen down within any measurable distance of time if no enemy action had injured them. He thought the damage done necessitating the reinstatement was "the direct result of action taken by the enemy." The explosion was the proximate or immediate cause of the damage and not merely a contributory cause. He had come to the conclusion that if there was war damage, and if works were thereby made necessary in order to reinstate the building in its pre-existing form, the whole cost of such works must be borne by the Commission unless, at the time of the war damage, the building would have had to be reinstated (not repaired) in any case. The appeal should be allowed.

COUNSEL: *Montague, K.C., and Michael Hoare; Rowe, K.C., and Danckwerts.*

SOLICITORS: *M. T. Turner & Co.; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Pope v. St. Helens Theatre, Ltd.

Sellers, J. 9th August, 1946

Emergency legislation—Negligence—Damage by enemy bomb to theatre ceiling—Occupier's subsequent failure to inspect or repair—Injury to plaintiff by fall of ceiling during performance—Liability—"War injuries"—Personal Injuries (Emergency Provisions) Act, 1939 (2 & 3 Geo. 6, c. 82), ss. 3 (1), 8 (1). Action tried by Sellers, J.

The plaintiff was on the 4th July, 1945, occupying a seat, for which she had paid, in the stalls during a performance at the defendants' theatre when a part of the ceiling fell on her and injured her. In September, 1940, a bomb dropped from an enemy aircraft had fallen some 150 yards from the theatre. In January, 1941, displacement of the ceiling, in the area which fell in 1945, was observed, and a firm of plasterers called in by the defendants executed limited repairs and made a limited inspection. Sellers, J., found that the displacement was due to

the explosion of the bomb which damaged the attachment and framework of the ceiling. The examination made by the plasterers did not include, because they were inaccessible, some 200 out of some 800 "wads" from which the plasterwork was suspended. No further inspections, periodical or otherwise, were made of the ceiling between January, 1941, and the date of the accident, with the result that progressive deterioration of the "wads," set in train by a crack due to the explosion, was not detected. That deterioration caused the fall. Section 1 (1) of the Personal Injuries (Emergency Provisions) Act, 1939, provides for the establishment of a scheme for payments to be made to "gainfully occupied persons" in respect of "war injuries" sustained by them. By s. 3 (1) no such compensation is payable in respect of a war injury "as apart from this subsection . . . (b) would, whether by virtue of any enactment . . . contract, or at common law, be payable—(i) in the case of a war injury, by any person . . . on the ground that the injury in question was attributable to some negligence . . . or breach of duty for which the person by whom the compensation . . . would be payable is responsible." By s. 8 (1) "War injuries" means physical injuries (a) caused by (i) the discharge of any missile . . . or (b) caused by the impact on any person or property of any enemy aircraft . . . or anything dropped from, any such aircraft."

SELLERS, J., having held that the defendants, in failing to make periodical inspections of the ceiling from the time when the plasterers finished their work in January, 1941, to the date of the accident in 1945, were guilty of a breach of warranty and duty towards the plaintiff, said that it was contended for the defendants that the action was barred by the Act of 1939 because the plaintiff's injuries were "war injuries" within the meaning of the Act. His lordship referred to *Adams v. Naylor* [1946] A.C. 434, at p. 435; 90 SOL. J. 527, and said that the question was whether the Act operated as a bar where, apart from its provisions, the court was prepared to find the defendants liable. It was argued that the damage to the theatre was not caused by the "impact" of anything dropped from an aircraft, but by blast. It was argued for the defendants that it was the impact of the bomb, which on impact had exploded, which had caused the damage to the houses destroyed as well as other buildings, including the theatre. He (his lordship) thought that the more proper view and that it was the impact of the bomb which had damaged the supports of the ceiling. In any event the damage came under either para. (a) or para. (b) of s. 8 (1). The fact that the damage to the building was so caused was not, however, sufficient to make the plaintiff's injuries "war injuries." He did not find it possible to hold, concurrently with his holding that the plaintiff's injuries were due to the defendants' negligence, that they were due to the falling of the bomb. He therefore held them not to be "war injuries." He could not accept the argument for the defendants that the explosion which damaged the theatre continued to operate month after month through the years so that it was the cause of the plaintiff's injuries when the ceiling fell. The defendants relied also on s. 3 (1), which did seem to contemplate cases of war injuries, as defined, which were at the same time attributable to the negligence of some person. There might be negligence preceding, or concurrent with, war damage, or possibly subsequent negligence, though a satisfactory case of that was hard to imagine. That was not, however, the position here. His lordship referred to *Greenfield v. London and North Eastern Railway* [1945] K.B. 89, at pp. 92 and 93 and 95, and said that other factors arose where, as here, there were added to the war damage deterioration and the opportunity to inspect and repair. There would accordingly be judgment for the plaintiff for £75, the agreed damages.

COUNSEL: *Wooll, K.C., and England; Pritchard, K.C., and Baucher.*

SOLICITORS: *Frank H. Henri, Liverpool; A. W. Ross, Liverpool.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

Robinson v. Robinson and Pilborough

Barnard, J. 22nd October, 1946

Divorce—Costs—Wife's adultery within three years of marriage—Husband's petition for judicial separation—Subsequent petition for divorce for same adultery—Co-respondent's liability for costs—Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 1 (1).

Undefended petition for divorce.

The parties were married in June, 1943. Less than three years later the wife committed adultery, the husband being granted a decree of judicial separation, with costs against the

co-respondent, as no petition for divorce could, by virtue of s. 1 (1) of the Matrimonial Causes Act, 1937, be presented within three years of the marriage. Three years having elapsed from the date of the marriage, the husband petitioned the court for divorce for the same adultery. It was submitted for the co-respondent that he ought not again to be ordered to pay the costs.

BARNARD, J., said that he could not accept that contention. He thought the submission of counsel for the husband more acceptable, that the husband, in taking proceedings for judicial separation, had been anxious to regularise his position. Both sets of costs really arose out of the co-respondent's adultery. It was unfortunate that there had been two sets; but there would have been none at all but for the co-respondent's adultery. The facts in *Menon v. Menon* [1936] P. 200, were entirely different, there being a claim for damages against the co-respondent after the petitioner had already accepted a sum for damages in an enticement action in the King's Bench Division. The co-respondent must pay the costs of this petition.

COUNSEL: *Victor Russell; Karmel.*

SOLICITORS: *Stephenson, Harwood & Tatham; Lipton and Jefferies.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Markham v. Markham

Lord Merriman, P., and Byrne, J. 29th October, 1946
Husband and wife—Justices' order no longer operative—Power to make an order reviving—Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58), s. 30 (3).

Appeal from a decision of Portsmouth Justices.

By a summons dated 20th June, 1946, a wife applied for the revival or variation, on the ground of her husband's conduct amounting to persistent cruelty and desertion, of an order dated 21st May, 1941, and made in her favour on the ground of her husband's desertion. Soon after that order had been made the parties had resumed cohabitation, and they were still cohabiting on 20th June, 1946. The justices made an order in favour of the wife, and the husband now appealed, contending that they had no power to revive the order of May, 1941.

LORD MERRIMAN, P., said that the question at issue was the precise meaning and application of the word "revived" in s. 30 (3) of the Criminal Justice Administration Act, 1914, as applied to an order made under the Summary Jurisdiction (Married Women) Acts. An order obtained by a wife under those Acts might—not must—contain an order for the payment of money. If it did so, then, by s. 9 of the Summary Jurisdiction (Married Women) Act, 1895, it must be enforced as if an affiliation order. Section 30 of the Act of 1914 dealt in general terms with orders for the periodical payment of money by courts of summary jurisdiction. By s. 30 (3), "any order . . . by a court of summary jurisdiction for the periodical payment of money may, upon cause being shown upon fresh evidence . . . be revoked, revived, or varied by a subsequent order." By s. 7 of the Act of 1895, " . . . a court of summary jurisdiction . . . may . . . upon cause being shown upon fresh evidence . . . at any time alter, vary, or discharge any such order . . ." The verb "revive" did not appear in that section. The court had made clear in *Underwood v. Underwood* [1946] P. 84; 109 J.P. 248; 89 SOL. J. 458, that the words "upon fresh evidence" in s. 7 of the Act of 1895, the artificial construction of which was reaffirmed in *R. v. Copestake* [1927] 1 K.B. 468, *Timmins v. Timmins* [1919] P. 75; 63 SOL. J. 287, and *Johnson v. Johnson* [1900] P. 19, were to be interpreted as being concerned not merely with the substance of the justices' order, but with the variation of the monetary provision in the order by itself; but by s. 19 of the Money Payments (Justices' Procedure) Act, 1935, the words "upon fresh evidence" were to cease to have effect in s. 30 (3) of the Act of 1914, fresh evidence, accordingly, no longer being required as a condition of the power given by s. 7 of the Act of 1895 to vary the amount of a weekly payment specified by a justices' order under the Act. *R. v. Copestake*, *supra*, and *Colchester v. Peck* [1926] 2 K.B. 366, were bastardy cases, but in *Underwood v. Underwood*, *supra*, it was held, following those cases, that, where it was sought to vary the substance of an earlier order, the condition "upon fresh evidence" still applied, but that if it was sought to vary the monetary part only of the order, the condition of fresh evidence no longer applied. By virtue of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, the order of May, 1941, had ceased to be of effect unless the justices could properly hold it to have been revived. Both in *Underwood v. Underwood*, *supra*, and in the earlier part of the argument in the present case, *Pratt v. Pratt* (1927), 96 L.J.P. 123; 71 SOL. J. 433, had escaped his (his lordship's) attention. Though that case appeared directly in point on the issue, the

court had not been referred to a single text-book which introduced it in the proper place, namely in a footnote to the word "revived" in s. 30 (3) of the Act of 1914. In *Pratt v. Pratt*, *supra*, it was held that an order obtained by a wife on the ground of persistent cruelty in November, 1924, but revoked in 1925 because the wife was found guilty of adultery, could be revived on fresh evidence, the fresh evidence being that a High Court judge, on a defended petition, had held her not guilty of the adultery previously alleged. There was clearly a difference between such a case and the revival, through subsequent matrimonial misconduct, of an order which, as here, had ceased to have effect because of condonation. There was not, however, sufficient difference in principle to justify a distinction between the present case and *Pratt v. Pratt*, *supra*. If it was possible to revive an order which had been revoked on the merits and as to its substance, it must, in his opinion, be equally possible in law to revive an order which had by the Act of 1925 ceased to have effect because of supervening facts such as resumed cohabitation. Nevertheless, though *Colchester v. Peck*, *supra*, was cited in *Pratt v. Pratt*, *supra*, so that the court must have been aware of significant passages in all three judgments, *R. v. Copestake*, *supra*, was apparently not cited. If it had been, it might have caused the court in *Pratt v. Pratt*, *supra*, to consider whether the affirmation by the Court of Appeal in *R. v. Copestake*, *supra*, of the decision of the Divisional Court and its approval of *Colchester v. Peck*, *supra*, did not make the application of the word "revived" in s. 30 (3) of the Act of 1914 to anything but the merely monetary part of a justices' order more than doubtful. *Pratt v. Pratt*, *supra*, was, however, in his opinion conclusive of the case, and the appeal must be dismissed.

BYRNE, J., agreeing, said that he, too, but for *Pratt v. Pratt*, *supra*, would have inclined strongly to the view that s. 30 (3) of the Act of 1914 provided only for revival of orders for the payment of money. The whole section appeared to him to be concerned with orders for the periodical payment of money and not at all with substantive orders, and he would have felt himself fortified by the views expressed in *Colchester v. Peck*, *supra*, and *R. v. Copestake*, *supra*.

COUNSEL: *P. Back* (D. A. Grant with him); *Molony and Shelhorn.*

SOLICITORS: *Brash Wheeler, Chambers, Davies & Co.; Wadson & Eaton*, Portsmouth.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

MR. T. DODDS

Mr. Thomas Dodds, solicitor, of Messrs. Thomas Dodds and Son, solicitors, of Newcastle-on-Tyne, died on Monday, 9th December, aged seventy-six. He was admitted in 1899.

MR. V. J. G. JOHNS

Mr. Vincent James Griffiths Johns, solicitor, Clerk to the Fishguard Magisterial Division since 1909, died recently, aged seventy-four. He was admitted in 1895.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

HOUSE OF COMMONS (REDISTRIBUTION OF SEATS) BILL [H.C.]
[17th December.]

Read Second Time:—

COMPANIES BILL [H.L.] [17th December.]
ROYAL MARINES BILL [H.C.] [17th December.]

Read Third Time:—

ARBROATH GAS PROVISIONAL ORDER BILL [H.C.]
[17th December.]

LONDON AND NORTH EASTERN RAILWAY PROVISIONAL ORDER
CONFIRMATION BILL [H.C.] [17th December.]

ST. ANDREWS LINKS PROVISIONAL ORDER CONFIRMATION
BILL [H.C.] [17th December.]

UNEMPLOYMENT AND FAMILY ALLOWANCES (NORTHERN
IRELAND AGREEMENT) BILL [H.C.] [17th December.]

QUESTIONS TO MINISTERS

LEGAL ACTIONS (COSTS AND INDEMNITIES)

Sir E. GRAHAM-LITTLE asked the Minister of Agriculture the amount of the costs received by the plaintiff in the action *Lindner v. Moon and Another*; the amount of costs incurred in defending the action; and under what authority agents of his, who have been found by a court of law to have instituted proceedings without justification, are indemnified at the cost of the taxpayer.

MR. T. WILLIAMS: The sum of £401 1s. 7d. was paid as the taxed costs recoverable by the plaintiff and the sum of £471 3s. 11d. was incurred by my Department in defending the

action. As regards the last part of the question, no agents of mine were found by a court of law to have instituted proceedings without justification. Owing to certain irregularities of procedure a requisition notice was held by the court to be invalid. As to why my agents were indemnified, I would refer the hon. member to the reply given by my hon. and learned friend the Attorney-General to the hon. member for Maldon (Mr. Driberg) on 1st August, 1946.

Mr. TIFFANY asked the Minister of Agriculture why his Department undertook to indemnify the defendant in the recent libel action of *Odum v. Stratton*; what were the terms of the indemnity; when was it given and by what person's authority; how much money falls to be paid under the indemnity; what public position the defendant held at the time of the libel action; and what public position he holds now.

Mr. T. WILLIAMS: As regards the first three parts of the question, I would refer my hon. friend to the answer given by my hon. and learned friend the Attorney-General to the hon. member for Maldon (Mr. Driberg) on 1st August. The damages awarded amounting to £500 have been paid, but the amount of the costs to be paid cannot yet be stated as the plaintiff's solicitors have not yet delivered their bill of costs. In answer to the last two parts of the question, the defendant was at the time of the action the Chairman of the Wiltshire War Agricultural Executive Committee. He has recently resigned that position.

[16th December.]

WAR DAMAGE COMMISSION (CORRESPONDENCE)

Mr. NORMAN BOWER asked the Secretary of the Treasury if he is aware of the long delays still being experienced by members of the public in obtaining acknowledgments and replies to their communications to the War Damage Commission and in getting individual cases dealt with; and if he will take steps to bring about an early improvement in these respects.

Mr. GLENNVIL HALL: Intake of claims has doubled this year and more than 10,000 claims are now being received and paid each week. Despite this great volume of work, small claims are, normally, still paid in two or three weeks, and all claims on average in four to five weeks, of receipt. The Commission is always ready to look into any case where undue delay is alleged.

Mr. BOWER: If I send the hon. gentleman particulars of a very bad case I have received, in which great delay was experienced and several communications completely ignored, will he please look into it?

Mr. GLENNVIL HALL: Yes, certainly, but it is not the normal practice of the Commission to answer letters of this type. The best answer to a claim is to send a cheque, and that is what is being done as soon as it is possible. I would add that the largest number of delays is caused by the fact that people will not fill in all the forms and returns with the details for which they are asked.

[17th December.]

RENT RESTRICTION, SCOTLAND

Mr. HOY asked the Secretary of State for Scotland (1) when he intends introducing legislation to amend the Rent Restrictions Act; and if he is aware of the hardship at present being experienced by some dispossessed owner-occupiers; (2) if he will consider setting up tribunals to which homeless house-owners could submit their cases on grounds of hardship without the expense of employing a lawyer.

Mr. BUCHANAN: The right of owners to recover possession of their houses will be considered when the Rent Restrictions Acts are reviewed, but in present circumstances I can hold out no hope of the introduction of early amending legislation. Under existing law any question of hardship between a tenant and an owner who wishes to recover possession of his house can be decided by the courts.

[17th December.]

PENSIONS APPEALS

Mr. DODDS-PARKER asked the Minister of Pensions if he is aware that the printed form, MPP 203D, which is sent by his Department accompanying an intimation that an original application for a disability pension has been rejected, states that there is no time limit to the right to appeal and does not indicate that delay in lodging an appeal will result in financial prejudice to the applicant; that the fixing of a time limit of six months in regard to the entitlement of the applicant to arrears without any previous intimation that such a limit exists is unjust to ex-service personnel; and if he will take steps to have the time limit removed.

Mr. WILFRED PALING: In order to comply with s. 9 of the Pensions Appeal Tribunals Act, 1943, form MPB.203D states that there is at present no time limit for appeal. It does, however, tell the claimant that, if he intends to appeal, it would be in his own interests to do so without much delay. In my opinion, a man who has been told of his right of appeal against my decision

to an independent statutory tribunal can reasonably be expected to exercise that right within six months if he feels that my decision is wrong and that he should be receiving a pension. If the hon. member has in mind any particular case in which the present practice in regard to arrears has caused hardship, I shall be glad to look into it.

[17th December.]

JUSTICES OF THE PEACE

Mr. H. NEAL asked the Attorney-General if he is aware that the recent magisterial appointments in Derbyshire included a person of nearly sixty-five years of age; and whether there is an age disqualification for the Commission of the Peace.

THE SOLICITOR-GENERAL: I am informed by my noble friend the Lord Chancellor that the last appointments made by him to the Commission of the Peace for the County of Derby were approved on 12th September last. These appointments numbered twenty in all. Apart from one candidate who was aged sixty, none of the other candidates were over fifty-five years of age. It is not the practice of my noble friend to approve candidates who are over the age of sixty unless they possess legal qualifications.

[17th December.]

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

- No. 2099. **Coal Commission**, *Borrowing and Stock Regulations*. December 10.
- No. 2092. **Coal Industry Nationalisation** (Financial Year of the National Coal Board) Regulations. December 10.
- No. 2072. **Supplementary Pensions** (Determination of Need and Assessment of Needs) (Amendment) Regulations. December 4.
- No. 2089. **Trading with the Enemy**, Germany. General Licence. December 10.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

Mr. C. R. ATTLEE, the Prime Minister, has been elected an Honorary Master of the Bench of the Inner Temple.

Notes

A paper entitled "Housing Management: Some Modern Developments," will be given to members of the Auctioneers' and Estate Agents' Institute, on Thursday, 2nd January, 1947, at 6 p.m., at 29 Lincoln's Inn Fields, W.C.2, by Miss H. G. L. Alford, B.A., P.A.S.I. (Housing Manager to the Metropolitan Borough of Fulham, and member of council of the Society of Women Housing Managers).

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 9th December. Mr. R. J. Kent was in the chair. Mr. W. H. C. Cleveland-Stevens proposed: "That the United States of America is an influence for the good of civilisation." Mr. O. T. Hill opposed. There also spoke: Messrs. A. Garfit, E. D. Smith, G. C. Raffety, J. G. Omerod, L. G. Cullen, T. A. Holford, C. H. Pritchard, E. E. Sutton and F. H. Butcher. Mr. W. H. C. Cleveland-Stevens replied, and the motion was lost by five votes.

At a further meeting, on Monday, 16th December (Mr. R. J. Kent in the chair), Mr. T. A. Holford proposed "That divorce by consent should be permitted." Mr. S. A. Redfern opposed. Messrs. S. E. Redfern, E. D. Smith, F. R. McQuown, O. T. Hill and L. G. Cullen also spoke. Mr. Holford replied and the motion was carried by one vote.

Two more rent tribunals are in operation as from Monday, 16th December. This brings the total number of rent tribunals in England to sixty-one. Details:—

Stockport, Ashton-under-Lyne, Buxton, Macclesfield, Audenshaw, Alderley Edge, Denton, Failsworth, New Mills, and the rural district of Chapel-en-le-Frith. Chairman: Mr. E. C. Gates. Member and Reserve Chairman: Mr. F. Yarwood. Member: Mr. I. Priestley. Reserve Members: Mr. N. Shaw and Mr. R. Parker. Clerk: Mr. A. Twiss. Office: N.A.T.C.O. Chambers, Princes Street, Stockport.

Shrewsbury, Leominster, Ludlow, Wenlock, Bromyard, Dawley, Kington, Oakengates, Whitchurch, and the rural districts of Bromyard, Leominster and Wigmore, Ludlow, Tenbury and Wellington. Chairman: Mr. A. E. White. Reserve Chairman and Member: Mr. D. S. Goodwin. Member: Mrs. L. J. Mart. Reserve Members: Mr. F. J. Clewer, Mrs. E. F. Puddle and Mr. H. Foster. Clerk: Mr. W. Breen-Turner. Office: 5A Shoplatch, Shrewsbury.

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